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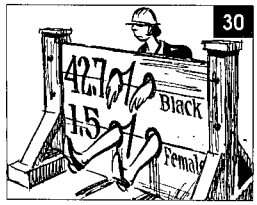

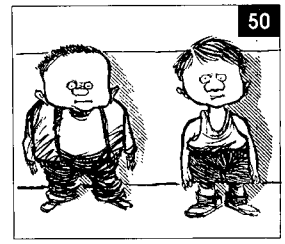

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Bloc Busters

By Virginia I. Postrel

Conservatives' sudden discomfort with markets threatens the GOP coalition.

WHEN HE ISN'T BUSY DEFENDING the Unabomber's message in the pages of *The Nation*, self-styled "neo-Luddite" Kirkpatrick Sale gives speeches attacking just about every technological improvement since fire. The speeches end with a bang, as Sale hauls out a sledgehammer and smashes a personal computer.

It is a powerful image, akin to burning books. It lashes out at science, at progress, at the future, at intelligence itself. It strikes horror even in sympathetic audiences.

And it turned up this fall—uncritically and unironically—on the cover of *The Weekly Standard*, a magazine whose editorial mission is to define the parameters of respectable conservatism, to promulgate the official line in the new conservative order. "Smash the Internet," read the accompanying headline. The articles subsumed under that title included a sensible-but-routine debunking of Internet hype and a slightly hysterical tour of loony and perverse on-line newsgroups. To anyone who owns a Web browser, the cover art was more newsworthy than the articles. But the art said plenty.

I mention this incident not because it is particularly important in and of itself but because it represents a disturbing trend among the conservative intelligentsia (and a few friendly politicos): a campaign, conscious or unconscious, to ostracize libertarian ideas in general—and free markets in particular—as dull or dangerous. That campaign has political consequences, weakening congressional resolve to seriously roll back government.

The problem, as one congressional insider explains it, is that most members of Congress can't imagine doing without government—in any aspect of life. "They're good conservatives so they want to reduce government," he says. "But they think of that as getting as close to the abyss as possible without falling off."

And so, one year into the Republican Congress, the scope of the federal government continues to grow, and conservatives spend most of their time talking about the terrible state of the "culture." After a brief flirtation with regulatory reform, Bob Dole now directs his energies toward denouncing the movies.

Republicans have allowed cultural obsessions to shape even their budget battles. A whack at corporate welfare would have done wonders to show that GOP lawmakers are equal-opportunity budget cutters. But business handouts have no moral significance outside libertarian circles—there's no sex involved, no families—so Congress felt little pressure to upset business interests to prove a point. The Commerce Department survives, its pork-dispensing powers mostly intact, as Republicans allow themselves to be painted as the enemies of impoverished babies.

IF YOU'RE CONVINCED THAT THE ONLY thing conservatives should care about is "culture," you'll ignore the core "leave us alone" issues that unite the GOP coalition. And you'll end up like Phil Gramm.

The man who once bragged of being "the Gramm in Gramm-Rudman," who stood virtually alone against nationalized health insurance and invoked the Dickey Flatt test of whether government spending was justified, now spends his time trying to convince the Christian Coalition he's with them on abortion. Amid such craven pandering, his perfectly sound arguments against sending troops to Bosnia come off as pure opportunism, and his economic policies don't even get reported in the press. He has muffled his natural free market message. He wants us to believe he's for "more freedom and less government," but instead of talking about taxes, guns, or property rights, he debates the finer points of theology—the precise relationship between faith and works—with conservative Christians.

And, judging from my Thanksgiving jaunt to South Carolina, he is in big trouble in that must-win state. Liberals know he's the devil, close observers think he'll say anything to get elected, and most people haven't a clue who he is. Looking up from a newspaper article about how Gramm's campaign considers the state critical, my brother—a third-year medical resident with libertarian leanings, someone who worried a good deal about ClintonCare—declared, "Gramm isn't going to win South Carolina if I have no idea what he stands for." He's right. Gramm's campaign is melting down, and not just because he's egotistical and "mean."

"I sense a total breakdown of the vision thing....I can't believe I have to vote for Bob Dole," a libertarian Republican money manager recently e-mailed me in a blue funk. No wonder polls show Steve Forbes running second in New Hampshire, with about 10 percent to Dole's 37 percent. He may be slightly geeky, but at least he's not ashamed of his message.

LIBERTARIANS ARE NOT, OF COURSE, CONservatives. In that sense, it's not surprising to see conservative magazines using *libertarian* as a vaguely pejorative word and scrupulously avoiding challenges to the regulatory state. The faster big-government liberalism collapses, the faster the political spectrum will reconfigure itself between libertarian (read: real

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Contributing Editors
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Science Correspondent Michael Fumento

Cartoonists
Chip Bok, Henry Payne, Scott Stantis

Volunteer Anthony Brown

Legal Adviser Don Erik Franzen

Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
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202-457-8577 Fax: 202-457-8564

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liberal) and conservative poles. But such a reconfiguration is premature. To deny that libertarians make up an important part of the current Republican coalition is akin to suggesting that Bill Clinton does not need black votes to win reelection.

And full-blown libertarians are only part of the story. Republican strategists endanger their party's future if they assume that grassroots voters want to hear only "cultural" messages about the evils of Hollywood and the sins of unwed mothers. Even evangelical Christians pay taxes, struggle with regulations, and want the government to leave them alone. The most Republican group in Times Mirror's typology of voters—and the most politically informed and active—is the "Enterprisers." They believe in God, certainly, and hold socially conservative attitudes, but they vote on economic issues and don't trust government.

REPUBLICANS SWEPT INTO OFFICE BY painting Democrats as people who want the government to boss you around and destroy the things you love: Clinton and the old Congress, they could say, want to control your personal life by nationalizing health care and foisting weird ideas on your kids; they want to run your business, take away your land and your guns, and force your church to hire gay atheists as choir directors; if you protest too much or seem too odd, they'll send the FBI to shoot you down.

It wasn't always the most nuanced or sophisticated message, but it was close enough to the truth. And it worked.

So Republicans now have the power to boss people around and destroy the things they love—and they are loath to give that power up. They have plenty of court intellectuals who'll give them reasons not only to keep it, but to exercise it vigorously: reasons why the Internet cannot be left to evolve without federal regulation, for example, and no public school can be allowed to say anything remotely tolerant about gays.

The irony is that cultural—or at least religious—conservatives have at least as great an interest in shrinking the powers of government, especially in the economic sphere, as do yuppie Republicans. As long as fledgling churches and neighborhood minyans are shut down by zoning boards, and anti-discrimination laws are interpreted to forbid Bible verses on paychecks while forcing landlords to rent to unmarried couples, religious conservatives will need Richard Epstein's legal scholarship more than Allan Bloom's attacks on rock music.

And though Bill Bennett now sees the merits of school choice, he was none-too-keen on the notion when serving as education secretary and chief culture czar. Decentralist-come-lately Lamar Alexander also did precious little to advance choice when he was educator-in-chief. Giving parents, rather than bureaucrats, control over where kids go to school is an idea only someone who appreciates freedom and competition would conceive—which is why it came from Milton Friedman. (Who, by showing policy makers how to crush inflation, also did more to restore the possibility of thrift than a thousand conservative lectures on the "cultural contradictions of capitalism" and the erosion of the Protestant ethic.)

When mainstream conservatives were whimpering about the media and trying to use the Fairness Doctrine to force CBS to be nice to Richard Nixon, those boring old libertarians, with their tenacious belief in free speech and free markets, were building the intellectual case to dismantle the broadcasters' monopolies. The conservative voices on talk radio and cable TV can thank scholars like Ronald Coase, Ithiel de Sola Pool, and Tom Hazlett for caring about the future and paying attention to something other than the "culture."

Conservatives are wrong if they think such things do not matter, merely because they are the stuff of "commerce" rather than "culture." The "leave us alone" agenda, as David Frum has tried to explain to his fellow conservatives, must succeed before traditional values can have a chance of revival. And that agenda is fueled almost entirely by libertarian thought, libertarian rhetoric, and libertarian conviction. ®

Sacking Markets

By Nick Gillespie

Don't blame capitalism for football's woes.

HERE'S A CRASH COURSE IN THE rapidly changing geography of professional football. There's no test afterwards, but there is a larger lesson to be learned: Don't confuse pork-barrel handouts with free market incentives.

The Los Angeles Rams, who actually played in Anaheim and who once hailed from Cleveland, are now the St. Louis Rams. The Los Angeles Raiders, who once were the Oakland Raiders, are now the Oakland Raiders again. The Houston Oilers are set to become the Nashville Oilers in 1998. The Cleveland Browns want to become the Baltimore Browns.

There are rumblings that the Tampa Bay Buccaneers will move to Orlando. Or they may head for Los Angeles, which is also a possible relocation site for the Arizona Cardinals (née the Phoenix Cardinals, formerly the St. Louis Cardinals, previously the Chicago Cardinals). The Chicago Bears, once upon a time known as the Decatur, Illinois, Staleys, are eyeing Gary, Indiana, with wanderlust in their hearts.

Watching this flurry of actual and potential travel activity among National Football League teams, observers have quickly flushed out the culprits behind such unsettling movement: free markets and the "greed" that makes them work.

"This is all about one thing, and one thing only," Denver Bronco owner Pat Bowlen told the *Los Angeles Times*, shaking his head. "Money." In *The New York Times,* Alan Ehrenhalt, the executive editor of *Governing* magazine, intoned, "It is the tyranny of the market that has destroyed the loyalty of...teams to their cities."

Lamenting that sports team owners are "borrowing a page from the playbook of...businessmen," the *Boston Globe*'s Charles Stein noted, "In business, there is no such thing as too much profit....When it comes to profits, the skybox is the limit." In a Senate subcommittee hearing on a proposed "fans' rights" bill, Sen. Patrick Leahy (D-Vt.) railed against "extortionist demands of insatiable [team] owners."

To be sure, there are economic forces at work in the movement of teams from here to there. For instance, Browns owner Art Modell doesn't want to move his team to Baltimore just because he has a hankering for crab cakes. Check out the bargain dangled in front of the man: Rent-free use of a brand spanking new $200 million stadium paid for by a dedicated state lottery; up to $80 million in one-time seat license fees for fans who want season tickets; luxury suites and club seats that fill Modell's pockets to the tune of about $30 million a year; all proceeds from parking, concessions, and advertising signs; and $75 million in moving expenses.

Who among us could resist such an offer, which is typical of, if a bit bigger than, the bargains offered to itchy franchise owners? I moved to Los Angeles for a job that pays less than half as much.

BUT SUCH DEALS HAVE LITTLE TO DO WITH the "tyranny of the market," unless you consider publicly funded stadium projects to be of central importance to private enterprise. When Bud Adams, the owner of the Houston Oilers, wanted a new stadium, he didn't think to build one —at least not by his lonesome self. He proposed that the city put up $150 million for a $235 million domed stadium that would house both the Oilers and the National Basketball Association's Rockets.

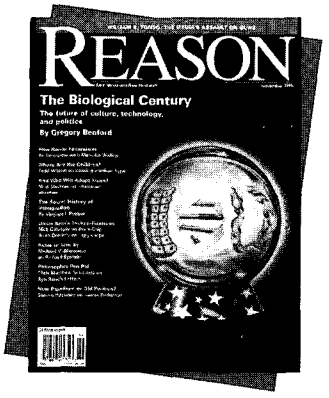
When Houston officials demurred, Adams embraced Nashville's offer: a $28 million "relocation" fee, a new stadium with 82 luxury suites, 9,600 "premium" seats, and 42,700 seat licenses, the proceeds from which will go to Adams. Nashville will kick in $144 million and the state another $80 million toward the stadium. Adams may well be as greedy as Midas, but that's not the problem.

The problem is the willingness of state and local governments to shell out taxpayer money for sports teams. This propensity includes expansion teams as well as traveling ones: To woo the NFL's Jaguars franchise, Jacksonville, Florida, raised hotel and parking taxes and levied ticket surcharges. The city spent $124 million to refurbish the Gator Bowl, guaranteed ticket sales, deferred $250,000 a year lease payments for five years, and even paid $4 million to move a paint company from the site of a practice field.

The dizzying cost spiral of pork-barrel politics is even lost on hard-luck Cleveland. At the Senate hearing for the fans' rights bill, Mayor Michael R. White lobbied for legislation that would allow the city to keep the Browns in Cleveland. "We believe Congress and only Congress has the power to stop this insanity." To White, it is crazy that another city should woo his Browns and that Modell should follow the trail of money south. After all, as White told the panel, he had engineered a $175 million stadium renovation deal by raising parking and sin taxes. The deal would have given Modell a free ride and kicked him into the top third of owners in profitability.

There is indeed insanity here, as well as tyranny, extortion, and greed. But the cause for concern has precious little to do with free markets and football—it has to do with politicians throwing low-percentage bombs with the taxpayers' money. ®

We're pleased to announce that Michael Fumento has joined REASON as a science correspondent for the next 15 months, under a grant from the William H. Donner Foundation, and that Nick Gillespie has been promoted to senior editor.



Biological Knock

Gregory Benford does an excellent job of setting the stage for the coming centuries' miracle technologies ("Biology: 2001," November).

Like all good science fiction writers (and he is one of the best) he extrapolates the technical aspects of these developments into the logical consequences in all fields.

But I disagree with one of his conclusions. Over the course of history, the wealthy have never gained much more advantage over the rest of us than they have always had. Progress invariably makes luxuries affordable to the masses.

At first genetic "cosmetics" will probably be an astronomically priced extravagance, but market forces will generally make versions of these techniques available to any budget in packages that may differ but will be just as effective. After all you can't afford a BMW on a Ford Escort salary, but both will get you from one spot on the map to the next.

The rise of the technological plutocracy makes for great fiction, and it will likely remain just that.

Clifford W. Acre
Seattle, WA

Guns and Mutters

Many thanks to William R. Tonso for finally documenting the public's ignorance of so-called assault weapons, as fueled by the media and the anti-gun lobby ("Shooting Blind," November). I would like to add a few points.

First, the term "assault weapon" itself is an invented propaganda term. What the military developed is an assault *rifle*, a weapon designed to gain advantage in armed combat through "firepower," i.e., spraying a large number of smaller, less lethal bullets. While the military and police later borrowed this concept and procured large-magazine 9mm pistols for self-defense, these weapons are poor choices for an "assault" and were never labeled as such, except by propagandists.

Second, because these weapons were designed as a deliberate trade-off of lethality and accuracy for firepower, they are not particularly deadly weapons, compared to revolvers, hunting rifles, or shotguns. For criminal purposes, they are an advantage only against armed adversaries, such as rival gang members or the police. When used in ordinary armed crime, they actually create an advantage to the victim, who is more likely to survive.

Third, though the media often imply these are fully automatic weapons, they actually argue against themselves; fully automatic fire is less, not more, deadly, because of the resulting loss in accuracy.

Ironically, we should be encouraging people to own these weapons, not banning them. While they are excellent for (perfectly legal) self-defense and Second Amendment purposes, they are less hazardous in the spontaneous crimes that legal gun owners commit, and the professional criminals who can use them to advantage will always get them anyway.

Kevin J. Gately
Glen Rock, NJ

I agree with your reasoning on every is- sue except the matter of guns and their control.

Let's face the facts. In 1994, the Census Bureau reported that between 1974 and 1994, deaths by firearms rose from 33,056 to 40,230 while deaths by car accidents declined from 46,402 to 40,880. Data from Handgun Control of Washington for 1990 (the latest available) show that handguns were used to murder 13 people in Sweden, 91 in Switzerland, 87 in Japan, 68 in Canada, 10 in Great Britain, and 10,567 in the United States.

Those figures speak for themselves. The use of handguns in the United States is completely out of control. Reason dictates that we should follow the action of our brother democracies and control handguns. Don't you agree?

Robert F. Bigham
Sebastian, FL

William R. Tonso replies: Even if for brevity's sake we take Robert F. Bigham's figures at face value, they hardly speak for themselves.

1. It is meaningless to compare the annual number of gun-related murders in a small country like Switzerland (7 million) to the number in a much larger country like the United States (250 million), or to compare the number of gun-related deaths in the United States in 1994 to the number in 1974 when we had 45 million fewer people. Only rates (so many per 100,000) can be meaningfully compared.

2. Gun-related-death numbers include homicides (even justifiable ones), suicides, and accidents, while car-related deaths are almost all accidental, though some so classified may actually be suicides or homicides.

3. U.S. *non-gun-related* homicide and armed-robbery rates are still five or six times higher than those of England and Wales, guns included. Though still much lower than ours, Britain's homicide rate is considerably higher now than it was before strict gun controls in the 1920s.

4. Handgun control in Switzerland is minimal, and 11 out of the country's 26

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cantons don't even require carry permits.

5. Since practically every Swiss male between the ages of 20 and 50 (55 for officers) is a militiaman, he keeps a government-issued fully automatic assault rifle (or if he is an officer, a semi-automatic pistol) in his home.

Open Admission Policies

Virginia I. Postrel's "Honest Admission" in the November issue left out one very important difference between immigration in the "days of Ellis Island" and immigration today. To those coming through Ellis Island, America was a land of opportunity and freedom, and that was all that was offered. Today we "bribe" people with offers of welfare of all kinds. Those seeking "honest" work and opportunity are not nearly the problem as are those looking only for a handout.

R.N. Maddox
Stillwater, OK

With the climate of the First Amendment hospitable to people who have ideas we desperately need, immigration is vital! If you argue that intellectual capital is becoming relatively more important than money capital, we must create a climate that attracts it. That's immigration.

Political nationalists and others should remember that other than Native Americans, all of us are immigrants—it's just a matter of when we got of the boat. America is the only country that renews itself with this energy, skill, and intellectual capital that migrates to our shores. That's why we will survive and prosper where closed societies that keep people away from their borders will have a difficult time.

Gordon J. Lee
Los Angeles, CA

As a legal immigrant I appreciate the generous impulse behind the open-arms, open-borders immigration policy advocated in your November issue. However, to allow free—that is, uncontrolled and unrestricted—immigration is a policy that no American government can adopt. A nation has the right as well as the duty to control its own borders. Without that control a nation is not in charge of its own destiny. History is full of examples of nations being overrun by uninvited outsiders. Some of the nations benefited from the infusion of new blood and some did not. In either case the destiny of the nation was taken out of the hands of the native population.

The United States could have a relatively open immigration policy in the past when immigrants knew that a newcomer had to work or starve. That knowledge screened out a lot of people. Today, new immigrants come because they know that they can live better here than in their own country whether they work or not. This is

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an invitation that no sensible person (not necessarily an ambitious one) living in a poorer country can resist.

Unfortunately, the United States is in no position to give a job or a welfare check to all the poor people of the world. Does that mean that we must tell workers that "they must stay where there is no work, seekers of liberty they must endure dictatorship, parents they cannot seek a better life for their children?"

Yes—because each nation, including the United States, has to solve its own unemployment problem, its own political problems, its own family problems. The nations of the world will not solve their problems by sending their unemployed and their political enemies to the United States. Nor is the United States in a position to integrate them into a society that is already overburdened with economic, ethnic, and family problems.

Let's have an open-door policy but let's admit into our house only those who are here to contribute, not to take advantage of our hospitality.

Joseph S. Duarte
Whittier, CA

I strongly disagree with your November editorial regarding immigration. I believe your arguments were not based on reason, but on emotion.

There are many examples throughout history where groups of individuals of distinct religion, race, language, or other characteristics were parts of a single government and enormous human suffering was the result. In contrast, there are few examples where they mixed and enjoyed the benefits of unity. Except for blacks, the United States enjoyed that status for many years. Several forces are now rapidly wrecking this unity, to our great detriment.

We are stupid to willingly balkanize the United States. We do not owe citizenship to others. We have a strong obligation to be concerned with the well-being of our present citizens and their descendants. We need a long time to blend what we have or in some reasonable way to organize long-term peace and unity in our land. Opening our borders would be a disaster.

Frank D. Werner
Teton Village, WY

Congrats on the fine Virginia I. Postrel edi-torial on immigration. However, I note that she finds flaws in all of the various schemes that have held sway during the past century. How about spelling out for your readers what immigration policy *should* be?

Joseph W. Johnson, Jr.
Lincoln, NE

Virginia Postrel replies: The purposes of my November editorial were twofold: First and foremost, to point out that as recently as 1965, the United States had no numerical limits on immigration from countries within the Western Hemisphere. And second, to suggest that the very real problems of central planning do not go away simply because the subject at hand is immigration.

The first point is a fact conveniently omitted by anti-immigration polemicists such as Peter Brimelow, who try simultaneously to scare white (and, to a lesser extent, black) Americans with the specter of an overly brown population and to blame perceived immigration problems on the 1965 act. You cannot have it both ways; immigration policy prior to 1965 was designed to keep out Asians, Jews, Poles, Irish, and Italians—not Mexicans, Haitians, or Cubans. As at Ellis Island, admission was restricted to people who would not become public charges and posed no threat to public health; later, literacy tests and an entry tax were added, increasing both illegal immigration and permanent residency in the United States, as moving back and forth across the border to work became more costly and difficult.

Unfortunately, in the current climate any changes in immigration policy will be in the direction of more restriction, more central planning, and more government intrusion in the lives of all Americans. The immigration "crisis," like the health care "crisis" of two years ago and the environmental "crisis" of five years ago, is the latest excuse for expanding activist government. In a more rational climate, and one more suspicious of government power, it might be possible to craft policies that used the principles of Ellis Island—no claim on the public trough (except for genuine public goods, over whose definition we would undoubtedly argue) and no central planning of the makeup of the immigrant population. On the latter principle, Gary Becker and others have proposed an auction system while Peter Salins has advanced a "first-come, first-served" system that would essentially be a visa lottery; Salins's plan would probably operate along the lines of the "diversity visas" now given to people from "underrepresented" countries, led by Poland and Japan, and to Irish immigrants. In either case, however, Americans would have to be willing to live with a certain amount of slippage, a certain level of illegal entry, or give up huge amounts of personal liberty.

Messrs. Maddox and Duarte raise the legitimate issue of the welfare state. It is, I believe, absolutely critical to separate the issue of welfare from that of immigration. Income transfers would exist if every immigrant vanished tomorrow, and far more immigrants are paying taxes to support such payments than are taking out of the system. The one serious exception is the abusive way in which some adult children have brought their parents to America with the expectation that Supplemental Security Income will support them. Congress is addressing this problem by changing the SSI law (and restricting other welfare payments to legal immigrants, even those who have paid taxes).

Anti-immigrant lobbyists still talk about welfare, but such talk is utterly cynical: They are not the least assuaged by reforms on the welfare side, since their goal is to keep out even self-supporting immigrants. That's why Alan Simpson's Senate bill, for instance, is designed to slash the number of highly skilled, tax-paying professionals entering the country legally. And it is why Ira Mehlman of FAIR argues that we have to keep out parents of adult children *even if they are no longer*

eligible for government benefits.

This isn't an argument about illegal immigration, about welfare, or about skills. Those are merely handy tools for people who believe that the well-being of Americans is best protected by keeping the population small, static, and racially pure—even at significant costs to our prosperity and liberty. I prefer to live in a free and dynamic society, one that, as Mr. Lee suggests, constantly renews itself and reaffirms its identity by welcoming people who are here by choice.

V Is for Various

In the November issue, Nick Gillespie identified obvious problems with implementing so-called V-Chip technology ("Chip Off the Block"). Certainly a chip programmed by the networks, or worse yet, the government, is abhorrent to anyone who values freedom. And yet the combination of deregulated airwaves and First Amendment protection has resulted in a profusion of programming, much of it dreck and garbage. Libertarians must admit that the V-Chip initiative is responding to a real problem with the deplorable content of much TV, and that even the most conscientious parents are not able to monitor every minute of their child's viewing. Knee-jerk opposition to the V-Chip will only further confuse libertarians in many minds with libertines.

Gillespie asks the important question, "Who will program the chip?" But who says there has to be only one kind of chip, or that it must be installed in the factory?

Why not a technology that allows the consumer to insert the chip (or later, simply push a button), and why not a market for V-Chips, with offerings from any group with a point of view? Then we can have chips from the Christian Coalition, Roman Catholic Church, Southern Baptists, Orthodox Jews, Unitarian Universalists, or Hindus—not to mention People for the American Way, the National Rifle Association, or *Reader's Digest* (a premium for subscribing).

The second generation of chips could identify programs that are especially worthwhile or enable a person to fashion an individualized program with the proper instructions. I would appreciate the opportunity to eliminate all the daytime talk shows from my set in advance. Not to mention any show with Geraldo Rivera. A third-generation chip should be able to distinguish on the fly between *Roots* and *Rambo*, based on criteria that even a computer can recognize, without straining its memory or its intelligence.

Mike Roeder
Ft. Myers, FL

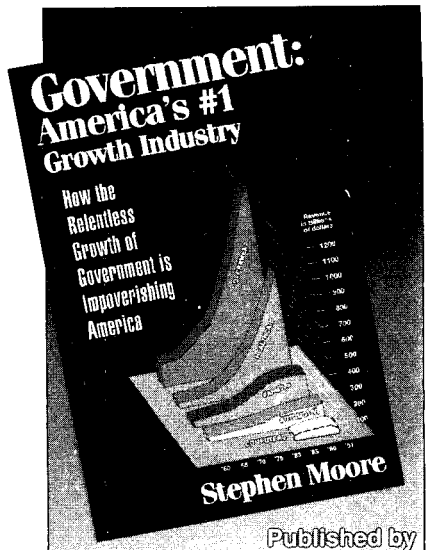
Nick Gillespie replies: I disagree with Mike Roeder regarding the "deplorable content of much TV," but yes, yes, yes to his suggestion of many and varied types of voluntarily enacted programming aids. Indeed, as I indicated in my editorial, dozens of those tools are already on the market in some form. Unfortunately, the proposed V-Chip legislation bears no resemblance to such filters.

Connie Chung Syndrome

Thank you for Michael Fumento's "A Confederacy of Boobs" (October) concerning breast augmentation. I was performing between 120 and 150 breast augmentations each year until Connie Chung's program about their alleged hazards. I dropped to zero breast augmentations the following year. The number of breast augmentations is coming back slowly, but now we're using the saline implant, which has some inherent problems that were not found in the silicone-gel implants.

In my career, I've performed in excess of 2,000 breast augmentation operations. No other operation resulted in the same percentage of patient satisfaction. The horror stories which became so abundant following Connie Chung's program have not occurred in my practice, nor in the practice of those with whom I'm familiar. We began referring to the panic-stricken patients who called following Connie's program as suffering from Connie Chung Syndrome.

James Michael Bestler, M.D.
Martinsville, VA



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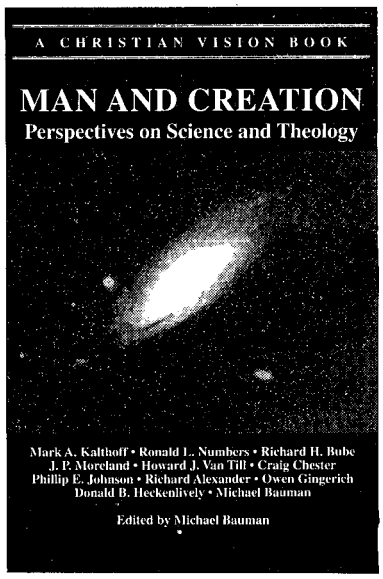
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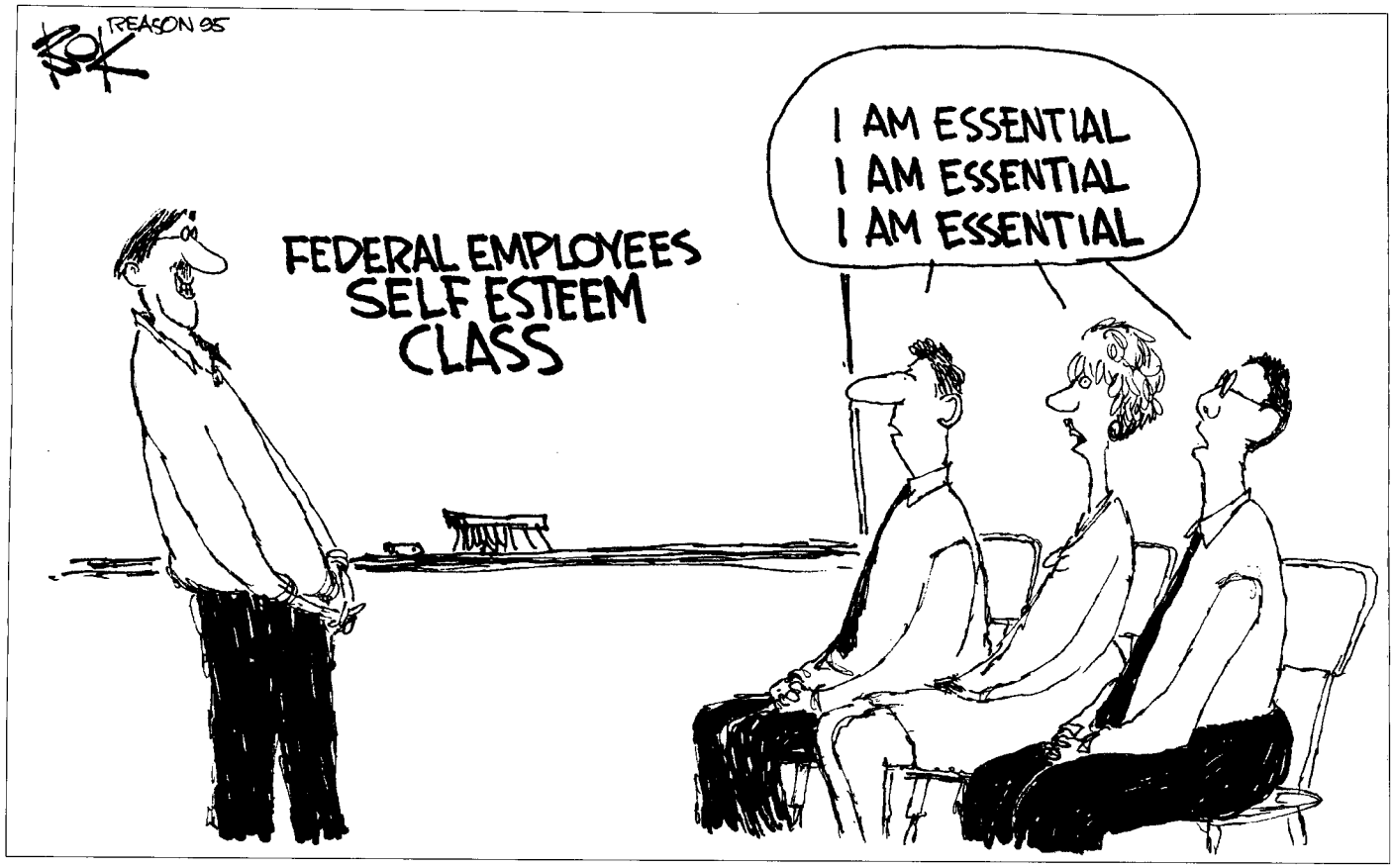


CHIP BOK

HENRY PAYNE

SCOTT STANTIS

A man showing his girlfriend a sawed-off shotgun stuck the gun in his pants and accidentally shot himself in the genitals. Police in Bridgeport, Connecticut, arrested him for illegal discharge of a firearm. That should show him.

***Playboy* asked all of the Republican** presidential candidates and House Speaker Newt Gingrich whether public schools should teach creationism. All declined to answer the question.

Joy Beckerman runs a store in Wood-stock, New York, that sells paper, clothes, and other items, all made from hemp. That doesn't sit well with the town's police. They can't bust her for selling marijuana, so they're trying to nail her for telling the truth. Seems Beckerman has a habit of stamping the words "I Grew Hemp" next to George Washington's picture on dollar bills. Washington did indeed grow hemp. The police sent one of the bills to the Secret Service, which warned Beckerman she could be prosecuted for "mutilating" currency.

A survey of 1,000 black churchgoers conducted by a University of North Carolina researcher revealed that fully one-third believe AIDS was produced in a germ warfare lab to get rid of blacks. Another third said they were "unsure" whether AIDS was deliberately created to kill blacks.

In Dothan, Alabama, lawyers won $1.00 in damages in a price-fixing suit against gasoline retailers. For their diligent effort on behalf of consumers, the court granted the lawyers $2 million in legal fees.

Congress wanted to know why the cost of building federal offices is so high. It seems bureaucrats have a slight tendency to overbuild. A report found that the 27-story Metcalfe Federal Building in Chicago has 55 food-service areas, including 26 full-size kitchens, eight kitchenettes, and a food court with space for eight restaurants.

In Swaziland, a member of parliament blamed that country's drought on the fact that women no longer cover their heads. He said the women have angered the nation's ancestors by defying tradition.

Douglas Albert has spent thousands of dollars of his own money to create a sanctuary for the bog turtle, which is listed by the government as an endangered species. The New Jersey Department of Environmental Protection told him that he needed a permit to raise the turtles. Albert spent five years and a lot of money trying to get one, but still came up empty-handed. In the meantime, the state sent a dozen armed troopers to seize his turtles. Now they are threatening him with thousands of dollars in fines.

In Fernandina Beach, Florida, a judge has thrown out a city ordinance that made it illegal for politicians to lie. The judge termed the law a "blatant" violation of the First Amendment.

Not all criminals are evil geniuses who can be thwarted only by the likes of James Bond. Lest we forget that, now comes a new book *America's Dumbest Criminals*. Included are the man who got a 90-day sentence for disorderly conduct. On the 88th day, he broke out of jail. He was caught a few months later and got another 1.5 years for escaping. Another man was charged with breaking into vending machines. He didn't help his case when he tried to pay his $400 bail in quarters.

The top executives at Disney are big contributors to just about every trendy liberal cause. But it seems that donating money is no longer enough. Vice President Al Gore and his wife Tipper needed costumes for a Halloween party. So the folks at Disney jumped in with custom-made Beauty and the Beast costumes. Disney even flew a Hollywood make-up artist to Washington to make sure the Gores got everything right. Disney wasn't even going to charge the Gores until some pesky reporters started asking questions. Actually, the Gores still won't have to pay for the costumes. The $8,365 tab is being picked up by the Democratic National Committee.

It's a little, well, chintzy for a restaurant to hand out toilet paper instead of napkins. And in Malaysia it's also against the law and punishable with an $80 fine. Repeat offenders can get jail time.

—Charles Oliver

Subtle Impact

Airbags' effect on driving behavior

By Ed Carson

AIRBAGS SAVE LIVES. AT LEAST that's the conventional wisdom, and why airbags have been mandated by the federal government. In a front-end collision, airbags do significantly reduce fatalities—by 24 percent over seat belts, according to a study by the Insurance Institute for Highway Safety.

But, says Steven Peterson, professor of economics at Virginia Commonwealth University, "An airbag allows me to drive more aggressively but not face any more risk." In fact, drivers of airbag-equipped cars get into and cause more accidents, negating the safety benefits for drivers and increasing the risk to others.

Peterson and his colleagues George Hoffer and Edward Millner tested the so-called offsetting behavior hypothesis in the October 1995 issue of *The Journal of Law and Economics*. The study found that airbag-equipped cars for model years 1989–1993 had higher personal injury claims and collision claims than non-airbag models for the same years.

The authors also examined all fatal driving accidents in Virginia from 1993 involving post-1989 model year passenger vehicles, and discovered that drivers with an airbag were more likely to be killed than drivers without one. In 48 percent of the single-car accidents in which only the driver was killed, that person was driving an airbag-equipped car. But cars with an airbag account for only 44 percent of post-1989 cars. Most single-car accidents are head-on collisions, and airbags are supposed to reduce fatalities in those cases by 24 percent. Based on these probabilities, drivers protected by an airbag should represent only 33 percent of those fatalities.

In fatal accidents involving a car with an airbag and a car without one, the driver behind an airbag was at fault nearly three-quarters of the time. The passengers and the driver of the other car usually bore the brunt of the impact.

"The driver with an airbag walked away most of the time. But the passengers and the folks in the other car didn't," says Peterson.

These results are also consistent with "buyer sorting," which holds that drivers who are more likely to get into accidents will buy safer cars disproportionately. However, if that were the case, says Peterson, researchers would expect to find higher accident rates in the first models to

adopt airbags, as the most dangerous drivers purchased the safest cars. But the study found no such trend for personal injury and collision claims, strongly suggesting that good drivers go bad—and bad drivers get worse—behind an airbag.

"Maybe insurance companies should place a surcharge on premiums rather than offering a discount for airbag-equipped cars," says Peterson. ®

Who's Essential?

Lessons from the government shutdown.

By Ed Carson

When the federal government shut down on November 13, 1995, "nonessential" government employees were sent home—an estimated 800,000 workers, 42 percent of the civilian staff. (All active military personnel remained on duty.)

Apparently, some federal workers and agencies are more essential than others. Before the shutdown, the Office of Management and Budget estimated that 67 percent of the Commerce Department's staff was nonessential, along with 89 percent at Education, and a whopping 99 percent at HUD.

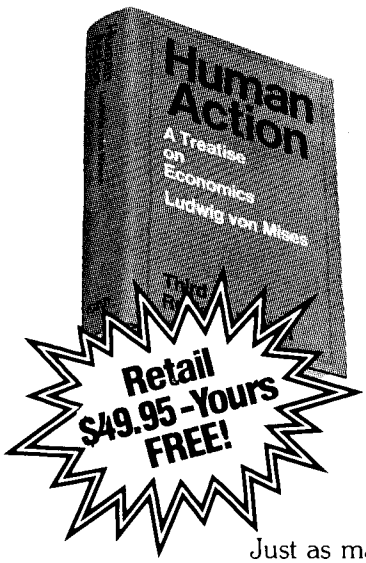
Those numbers bolster the case of Republicans who had proposed dismantling or eliminating those departments and the Energy Department. (The Departments of Energy and Agriculture already had their 1996 appropriations approved and were therefore not affected by the shutdown.) However, it appears that even these predominately "nonessential" agencies will survive the supposedly draconian Republican budget cuts.

Estimated employees furloughed during the government shutdown

Agency	Number	% of Civilian Staff
Commerce	25,100	67
Defense	258,000	31
Education	4,400	89
Health and Human Services	34,600	58
Housing and Urban Development	11,800	99
Interior	57,000	72
Justice	27,000	27
Labor	13,200	75
State (within U.S.)	6,300	81
(abroad)	1,700	9
Transportation	18,000	19
Treasury	124,500	83
Veterans Affairs	36,400	16
EPA	17,700	96
General Services Administration	13,300	79
NASA	19,800	93
Office of Personnel Management	2,100	47
Small Business Administration	3,000	59
Social Security Administration	61,400	93
National Archives	2,400	99
White House core staff	357	89
White House agencies	1,000	42
Other*	61,000	42
TOTAL	800,000	42

*includes many small, independent, or intelligence agencies, the D.C. government, the courts, and Congress.

Source: Cox News Service



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Balance Sheet

By Rick Henderson

Assets

Hi-de-ho, Neighbor. Will the Internet destroy "community" (whatever that means), converting us into hapless loners who never switch off our modems? The annual Times-Mirror "Technology in the American Household" survey suggests not. Cybersurfers are more likely to go to movies, more likely to vote, and more frequent readers of newspapers and magazines than the unwired. They also spend time with friends and relatives in "real space" as frequently as the technologically challenged.

Comics Relief. Stupid, meddlesome bureaucrats and overzealous enforcers of the Endangered Species Act prevent a tiny catering business from opening its doors. For three weeks in November, this drama plays out in *Blondie*, the venerable comic strip. Blondie Bumstead's shop finally opens after a cat eats the endangered mouse living in the building. It's just as well: Had Blondie kept selling food from her home, no doubt the zoning board would have nailed her.

Power Arrangers. Utilities prepare for free market electricity. Southern Co. of Atlanta and Central and South West Corp. of Dallas buy British electric companies that were deregulated in 1990. Houston Industries and Pacific Gas & Electric also plan to purchase U.K. utilities. "The overriding reason for the investments," says *The New York Times*, "is to get a head start on learning to manage in a deregulated [domestic] industry."

Drug Deal. Drug makers who use synthetic materials can often complete their initial tests for the Food and Drug Administration in a few weeks; testing an identical product made from living matter, however, often takes as long as a year. The FDA ends this discrepancy, treating most biotech and synthetic drugs by the same rules. The Biotechnology Industry Organization says these changes will save millions of dollars and get new drugs to market months sooner.

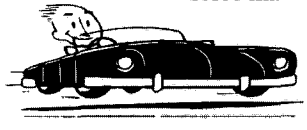
Liabilities

Hugs, Everybody! America's move to Bosnia combines the blind idealism of Wilsonian internationalism with the silliness of '90s pop psychology. Bosnia ain't Somalia—a pre-industrial society where tribal warlords gun one another down for scraps of food. It's a Western nation where prosperous, literate people would rather shoot their ethnic rivals than look at them. Only the ignorant, the arrogant, or the naive could honestly believe that the Serbs, Bosnians, and Croats will all love one another by 1997.

Two Bobs. Labor Secretary Robert Reich rightly rails against companies that delay bankruptcy by spending their employees' 401(k) contributions on general operations. Fair enough. But Reich remains silent as—right under his nose—Treasury Secretary Robert Rubin raids government employees' pension funds to, well, keep the federal government from going bust.

Fast Buck. The drug war gets more expensive. President Clinton issues an executive order letting the feds seize the assets of Colombian drug traffickers and the individuals *and banks* that do business with them. *The Washington Post* says banks must now ferret out any illegal activity. And if the feds seize a bank account from the wrong Rodriguez by mistake? "Since no court has found the listed individuals guilty of anything," says the *Post*, the only recourse "is to go to [the feds] and beg."

Flagging Federalism. The GOP's 10th Amendment obsession wanes. The highway bill signed by President Clinton forces states to enact "zero-tolerance" measures against teenagers who drink and drive. The House and Senate telecommunications bills would force manufacturers to put anti-violence "V-chips" in new television sets. And the job-training bills passed by both houses would establish an "integrated labor market information system" to track job openings and salaries at every company in America.



Rental Rights

Landlords and tenants team up.

By Ed Carson

LANDLORDS RARELY ARE THREATened with jail time for protecting their tenants' rights. But that's what's happened to landlords in Kalamazoo, Michigan, and Park Forest, Illinois.

Kalamazoo doesn't seek the consent or presence of tenants while conducting inspections of rental apartments. Jerry Speedy, manager of the Emerald Park Apartments, thought that violated his tenants' constitutional protections against unreasonable searches and seizures. When inspectors came to Emerald Park in August 1994, he refused to let them enter rented apartments without tenants' written consent, and was charged with violating the city's housing code.

His tenants overwhelmingly supported his decision.

"Most of us hadn't known what the policy was. When we found out, we became very alarmed," says David Runstrom, who lives in the complex.

The county court dismissed the charges against Speedy on narrow legal grounds. (The Reason Foundation filed an amicus brief supporting Speedy's position.) But 14 tenants filed a federal lawsuit challenging the constitutionality of Kalamazoo's inspection policy.

Scott Bullock, an attorney with the Institute for Justice, a D.C.-based public interest law firm, is representing the Kalamazoo tenants. He's also preparing to take similar action in Park Forest, which has a similar inspection law. The Chicago suburb wants to throw landlord Rick Reinbold, renter Debra Taylor, and her 12-year-old daughter in jail, because Reinbold and Taylor refuse to allow officials to inspect Taylor's home.

Bullock is confident about the cases because "Americans believe their home is the one place where government must unquestionably respect their privacy."

And having landlords and tenants on the same side certainly doesn't hurt.

The Adarand Aftermath

Cracks in the dam of racial set-asides

By Brian Doherty

THE SUPREME COURT'S DECISION last year in *Adarand v. Pena* decreed that states and localities must apply a standard of "strict scrutiny" to their racial set-aside programs. While this did not mean the instant collapse of state-sponsored affirmative action, the decision is already having consequences.

In Las Cruces, New Mexico, McCrossan Construction challenged Defense Department set-asides and won. Its threatened lawsuits against Defense Department job-bidding procedures giving special advantages to "small, disadvantaged business" caused the Pentagon to give in and offer the challenged bids unrestricted, McCrossan vice president Charles Gaasland says. Now DOD has announced a permanent end to its set-aside rule, which dictated that no white-owned firms could bid if two qualified minority or disadvantaged firms could do the work.

George LaNoue, a professor at University of Maryland at Baltimore who studies affirmative action law, says that the DOD's abandonment of its set-aside policy has potential ramifications for all federal set-aside programs. "If the government didn't think the program was defensible in this case, I don't know why most other federal set-aside programs would be any different."

Meanwhile, the Los Angeles County Metropolitan Transit Authority's minority contracting set-aside program was recently overturned in Los Angeles Superior Court. Michael Cornelius, formerly a vice president of a San Diego construction company, claimed to have lost work unfairly because of the MTA's demand that its contractors always hire at least 29 percent minority subcontractors. He sued and won. The MTA has been granted a temporary reprieve on ending the program while the agency waits for its appeal to be settled.

Also in California, a lawsuit by contractor Bonadiman-McCain Inc. against the city of San Bernardino's minority set-aside program has led the city to drop the program in exchange for dropping the lawsuit.

Rob Corry, a lawyer from the Pacific Legal Foundation who represented both Michael Cornelius and Bonadiman-McCain, prefers fighting it out in court to having the government give in. "We're concerned with establishing legal precedent, so we need appeals court decisions," he says.

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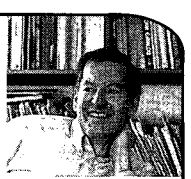

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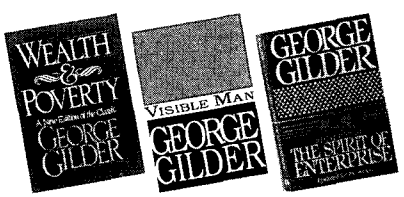

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Season's Greetings from ICS PRESS

Hitting the (Financial) Books

Investing in, not lending to, college students

By Rick Henderson

LITTLE JANEY'S STARTING kindergarten next year, and you're already panicking: Just to send her to a state college, the family may have to take out a second mortgage or live on canned food. What if, instead, investors were able to finance talented young people as they do untested but promising entrepreneurs? You would not have to go in hock to send Janey to State U: Willing investors would give her the money.

A New York investment group wants Congress to modify the tax code and convert college financing from a system based on debt to one based on equity. Human Capital Resources Inc. says students should have the option to get their college money from investors in "human capital equity funds," a new type of mutual fund that would pay students' college expenses and repay their investors from the incomes the students earn after they graduate. "Instead of borrowing money for college," says HCR Chairman Roy Chapman, "students could earn it."

Here's how the system might work: Say Janey would require $50,000 for four years in college. She could apply to Human Capital Resources for money. If HCR decided to invest in Janey (based on her interests, grades, test scores, participation in extracurricular activities, or whatever criteria the company deemed important), it would agree to finance her four-year tenure. (Since the tax code would treat this "investment" as income, she would also get enough additional money to pay her taxes.)

She would then enter a contract with HCR. Her academic performance as a freshman would let her "earn" her sophomore tuition, and so forth, until she graduates. If she can't keep up, HCR could terminate the contract, and reduce her repayment obligation accordingly. If she fulfills her academic commitments, however, upon graduation she'll begin paying a percentage of her income to the fund that owned her contract for the first 15 years she's in the work force. (A model developed by HCR would have students repay .022 percent for each $1,000 received, so a student receiving $50,000 would pay 1.1 percent of her income.)

Equity funds would finance the contracts. Much as mutual fund managers try to minimize their investors' risks by funding many companies in diverse industries, equity fund managers would bundle contracts, thus spreading the risk for investors in newly graduated workers. Not every student, after all, will earn big bucks at graduation; some, for instance, will no doubt choose full-time parenthood over earning salaries. Chapman says a fund wouldn't need much start-up capital: He estimates a fund as small as $25 million to $50 million (with as few as 500 contracts) would offer enough diversity to attract investors.

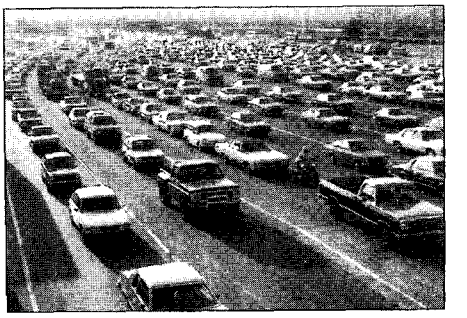
The equity fund would be a good deal for parents and students. Families could avoid going into debt to finance their children's education. If Janey earned $30,000 at graduation and saw her income grow at about 5 percent a year, over the 15-year span she would pay about 50 percent less to her equity fund than she would to lenders in a typical student-loan package. Taxpayers wouldn't be on the hook if she defaulted. And if she didn't stay employed the entire time, or worked sporadically, her investors would still get some money as long as she worked.

Chapman and his partner, Gerard Wendelken, have drafted a bill that would incorporate the tax changes to let equity funds form. They're meeting with members of Congress, looking for sponsors. "Instead of investing in [educational] access," says Chapman, "we ought to support success." R

Picket Fences

Can government keep up with changes in how we work?

By Ed Carson



If you telecommuted, you'd be home by now.

NOT LONG AGO WORKERS LEFT their suburban homes in the morning and went to their 9–5 job downtown. For most workers, that's still the case. But a growing number of Americans are working at home at least part-time, and government planners are having trouble adjusting to the changes.

Technological advances and the transition toward a decentralized, information-based economy have made working at home affordable and desirable for many Americans. An estimated 39 million Americans do some work at home now, including 13 million who run home-based businesses. The rise of home businesses is blurring the traditional distinctions between residential and commercial uses. But zoning laws have been based on enforcing those divisions. Running a business out of the home is a crime in many places, though enforcement is usually limited to situations in which a neighbor complains.

"Most zoning ordinances still in effect are antiquated. Even the new stuff is not much better," says Michael Wiley, executive director of the Home Office Association of America.

The city of Chicago recently lifted its ban on home businesses, but Wiley cites the new rules as a prime example of what not to do. Home business owners must pay a $150 annual license fee, employees must be residents of the home, no more than 10 percent of the home can be used for business purposes, and house additions or alternations that will be used for home businesses are not permitted.

Working at home will also create headaches for transportation officials, according to *WorkSmart*, a new study by the Denver-based Center for the New West for the California Department of Transportation. The study says that most people will still come into the office, but increasingly they will work at home part of the week, work irregular office hours, or take personal trips during the day. They'll make a greater number of shorter trips throughout the day. This will likely reduce rush hour traffic congestion, but will make public transportation plans obsolete.

Ride-sharing programs and mass transit systems are based on the assumption that people will go to and leave work at the same time five days a week. Even when that was largely true, car pooling was extremely unpopular and public transit had to be subsidized. But workers will be even less likely now to lock themselves into a regimented schedule far in advance. Spending billions on light-rail boondoggles or forcing employers and employees to participate in ride-sharing programs doesn't address the changing needs of workers. A Reason Foundation study, *Looking Beyond ECO: Alternatives to Employer-Based Trip Reduction*, suggests that communities instead allow privately run commuter vans, jitneys, and shuttles to operate.

Cities, counties, and states that don't get with the times may be left in the dust. "Communities that ignore these changes risk becoming ghost towns," says Van Romine, project director of the *WorkSmart* study. ®

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When Progressive intellectuals convinced Americans that bigger is best—for business, labor, and government—they corrupted capitalism and dumbed down work. We're finally correcting their error, but at a price.

By Brink Lindsey

Big Labor felt it first. Caught between surging import competition and the progress of factory automation, workers in heavily organized manufacturing industries saw their ranks decimated during the 1970s and '80s. Steel industry employment plummeted by two-thirds from 512,000 in 1980 to 170,000 today; membership in the United Auto Workers has been cut in half, from 1.4 million to 700,000, since 1969. Meanwhile, as overall manufacturing employment has remained more or less flat for decades, employment in the much less unionized service sector ballooned. As a result, unionization of the private sector labor force has declined from 36 percent in 1953 to only 11 percent today.

Next came Big Business. In the 1960s it was argued, most eloquently by John Kenneth Galbraith, that large American corporations were so powerful that they were effectively immune from market forces. Then came the '80s and '90s. One blue-chip giant after another began hemorrhaging red ink. General Motors saw its market share drop from 45 percent to 35 percent during the '80s; IBM's stock price collapsed from $140 to $40 between 1991 and 1993; Sears Roebuck was forced out of the catalog business. Foreign competition walloped not just smokestack dinosaurs, but Silicon Valley as well. *Restructuring* and *reengineering* became codewords for middle-management layoffs; while middle managers make up only 8 percent of the work force, they accounted for 19 percent of the job losses between 1988 and 1993.

Now it's Big Government's turn. Disillusionment with government can be traced back to the grand betrayals and failures of the 1960s and '70s: Vietnam, Watergate, stagflation, the growth of the underclass. But the current anti-Washington fervor ignited in the late '80s and was fueled by a succession of scandals featuring a sleazy mix of public power and private gain: the Keating Five, the Jim Wright book deal, the HUD mess, honoraria, the flap over congressional pay raises, and check kiting at the House bank. Throw in the chronic irresponsibility of deficit spending, George Bush's broken "no new taxes" promise, and Bill Clinton's general fecklessness, and distrust of politicians finally appears to have reached a healthy level.

Thus far the new anti-Washington mood has produced two electoral spasms: the 19 million votes cast for the bizarre Ross Perot in 1992, and the sweep of Republicans into control of Congress (as well as numerous state houses and state legislatures) in 1994. The first was a dead end; the fate of the second remains unclear. What is clear, however, is that we are far, far removed from the heady days of the New Frontier and the Great Society. Omnicompetent government has lost its luster, and its legitimacy; it is only a matter of time before it loses significant amounts of power.

One by one, the three great institutions of modern American political economy have come under sustained and furious assault. Those events are interrelated, and their combined historical significance is profound: A whole way of life is coming to an end. The triumvirate of Big Government, Big Business, and Big Labor—whose rise and ascendancy have done so much to shape American society over the course of this century—is collapsing, and something new is emerging in its stead.

A lot of ink has already been spilled in describing these changes. Virtually every popular business book these days is filled with talk of flattening organization charts, replacing functional departments with ad hoc teams, downsizing, outsourcing, speeding up response times and product cycles—in short, breaking up creaky old corporate empires and replacing them with something more flexible, more dynamic, more market-like. Meanwhile, authors such as George Gilder and Alvin Toffler (and politicians, notably Newt Gingrich) have spied a larger social transformation—from Machine Age to Information Age—and identified its defining feature as, in Toffler's words, "demassification": the decline of mass production, mass media, and mass politics, and their replacement by social institutions less centralized and hierarchical, more individualized and interactive.

What has been missing, though, is a satisfying explanation of why those changes are necessary. Overwhelmingly, the analysis up to now has focused on technology: Our in-

ILLUSTRATION: © NIKOLAI PUNIN/SIS

stitutions must change because they are technologically obsolete. According to this view, the technology of the industrial era was inherently centralizing and homogenizing (the assembly line, the skyscraper, broadcast television), while that of the information age is centrifugal and variegating (the personal computer, the fax machine, desktop publishing). The fundamental character of technology has changed, and so economics, culture, and politics must adapt accordingly.

Even as a rough generalization, this view of historical change is incomplete at best. Yes, new information and communications technologies have changed the workplace, making it easier to push decision making away from the center and closer to the customer. And yes, the entrepreneurial rambunctiousness and extravagant productivity of the electronics industry have shown private enterprise at its best just as government's stock has been dropping.

The transformation currently in progress is needed not to update the obsolete, but to correct the mistaken. What we are witnessing around us now is the uprooting of error—false assumptions and confusion buried so deep at the foundations of economic and political life that their excavation and removal leave the structures built upon them in ruins.

Nevertheless, there is a lot more to the old regime's decline and fall than the invention of the microprocessor. Up to now at least, foreign competition has done more to reshape American business practices than have computers—particularly competition from Japan, a nation much less computerized than our own. And in the political realm, primary credit for the present disaffection from government must be given to two factors: a string of government-caused disasters that has sapped public faith in statist "solutions"; and set against that backdrop, an ongoing war of ideas against collectivism in all its forms.

As to the rise of the old regime, it is fair to say that the concentration of people and resources begotten by mass production made the case for top-down control more plausible, and thus helped its imposition. But the idea, or even the implication, that the governmental and economic institutions now under attack were appropriate to a certain level of technological development is utterly wrongheaded. Those institutions have been flawed from their inception.

The transformation currently in progress is needed not to update the obsolete, but to correct the mistaken. What we are witnessing around us now is the uprooting of error—false assumptions and confusion buried so deep at the foundations of economic and political life that their excavation and removal leave the structures built upon them in ruins. Specifically, the old order now passing from the scene was less the institutional incarnation of the industrial revolution than a tragic misinterpretation of it. Indeed, it is not going too far to say that this order was the result of an industrial counterrevolution.

The Brainpower Revolution

The American industrial revolution represented a blazing efflorescence of creativity, invention, and analytical genius—in short, of brainpower—in the economic realm. The result was a radical break in human affairs: New energy sources, new electromechanical technologies, and new forms of organization were combined to increase the capacity for creating wealth beyond any prior imagining.

Thomas Hughes, in *American Genesis*, has compared the burst of technical genius during this period to the accomplishments of Periclean Athens and Renaissance Florence. It is exemplified by the careers of Bell and Edison, and charted by the increase in U.S. patents issued annually from 683 in 1846 to 22,508 only 40 years later.

The organizational innovations of the time are less celebrated, but also transformed the world. To give just a few highlights: line-and-staff management (1850s), modern cost accounting (1850–60s), commodities exchanges (1850s), futures markets (1850s), department stores and chain stores (1860s), monitoring of inventory by stock turn (by 1870), continuous-process production (1870–80s), vertical integration (1880s), large-scale trading of industrial stocks (1880–90s), incorporation of industrial enterprises (1890s), R&D departments (1890s), consumer packaging and national advertising (1900s), earnings forecasting and capital budgeting (1900s), moving assembly lines (1910s), market research (1910s), and the multidivisional corporate form (1920s).

As the complexity and intellectual challenges of economic life escalated dramatically, the need for knowledge workers—business managers, engineers, accountants, lawyers, advertising and marketing specialists—rose correspondingly. According to James Beniger in *The Control Revolution*, knowledge workers as a percentage of the total U.S. labor force made a quantum jump with the advent of mass production: from 4.8 percent in 1870 to 12.4 percent 20 years later, rising to 24.5 percent by the end of the 1920s. Thus the industrial revolution occasioned an unprecedented application of brainpower to and diffusion of brainpower throughout economic life.

At the same time, however, other developments were pushing in the opposite direction. Political and economic institutions were being created that bottled up brainpower, frustrated its exercise, or ignored it altogether. Most dramatically, government's rapid growth encroached upon the blooming, buzzing variety of private action and substituted the inflexible sameness of bureaucratic edict. Meanwhile, the new giant corporations were the instruments of industrial revolution, but they were flawed instruments. In their handling of workers, and their organization of managers, they betrayed their promise and became instruments of industrial counterrevolution.

The Intellectual Counterrevolution

The cephalization of economic life brought about by the industrial revolution was not *sui generis*. It was, rather, part of a larger historical continuity: the development of capitalism. As opposed to the custom- and coercion-bound feudalism from which it emerged, capitalism is characterized by the systematic encouragement it gives to the development and use of brainpower. By dispersing control over investment decisions, and allowing unsuccessful investments to fail and successful ones to attract first profits and then imitators, capitalism creates a social environment that is powerfully conducive to experimenting with new ideas and new ways of doing things. Friedrich Hayek had this in mind when he referred to market competition as a discovery procedure. Industrialization represented an escalation of that discovery procedure to a new level of intensity.

The leading interpreters of the Industrial Revolution failed to see that abundance was inextricably connected to and sustained by the competitive market process. In one of history's bitterest ironies, capitalism's great achievement—the creation of previously unimaginable wealth—served as the inspiration for its nemesis: the delusion of central planning.

To contemporaries, however, the marvels of the Machine Age were considered not a testament to capitalism, but a repudiation of it. The leading interpreters of the new economy were dazzled by the productive abundance of the new industrial techniques, but they failed to see that this abundance was inextricably connected to and sustained by the competitive market process. Competition they regarded as wasteful, an anachronism. In one of history's bitterest ironies, capitalism's great achievement—the creation of previously unimaginable wealth—served as the inspiration for its nemesis: the delusion of central planning.

The supposed conflict between competition and the industrial economy was central to the writings of Thorstein Veblen, the iconoclastic economist whose influence was strongly felt among Progressives and New Dealers. (In 1939 the editors of *The New Republic* conducted an informal poll of "books that changed our minds," and Veblen headed the list.)

Veblen distinguished between "industry," which is motivated by the "instinct of workmanship," and "business," which is motivated by the prospect of pecuniary gain. "[T]he modern industrial system," he wrote in *The Theory of Business Enterprise* (1904), "is a concatenation of processes which has much the character of a single, comprehensive, balanced mechanical process." However, he continued, "the pecuniary interests of the business men...are not necessarily best served by an unbroken maintenance of the industrial balance."

Veblen believed that the continuation of business rivalry in an industrial economy caused "chronic derangement, duplication, and misdirected growth." In that light, he praised the mergers and consolidations that had been effected by the largest business enterprises: "So long as related industrial units are under different business managements, they are, by the nature of the case, at cross-purposes, and business consolidation remedies this untoward feature of the industrial system by eliminating the pecuniary element from the interstices of the system as far as may be....The heroic role of the captain of industry is that of a deliverer from an excess of business management. It is a casting out of business men by the chief of business men."

Veblen offered no clear political program, but others who shared his dim view of competition certainly did. Prominent among those was Edward Bellamy, whose 1888 utopian novel, *Looking Backward: 2000–1887*, sold a million copies and inspired the formation of Bellamy clubs that continued around the country for decades. In *Looking Backward*, Bellamy outlined a future history of the coming socialist millennium, and he saw the giant enterprises of his day as a kind of transitional stage:

"The movement toward the conduct of business by larger and larger aggregations of capital, the tendency toward monopolies, which had been so desperately and vainly resisted, was recognized at last, in its true significance, as a process which only needed to complete its logical evolution to open a golden future to humanity.

"Early in the last century the evolution was completed by the final consolidation of the entire capital of the nation....The nation, that is to say, organized as the one great business corporation in which all other corporations were absorbed; it became the one capitalist in the place of all other capitalists, the sole employer, the final monopoly in which all previous and less monopolies were swallowed up, a monopoly in the profits and economies of which all citizens shared. The epoch of trusts had ended in The Great Trust."

Thus, according to the story, was market competition eliminated, and its fourfold wastefulness: "the waste by mistaken undertaking," "the waste from the competition and mutual hostility of those engaged in industry," "the waste by periodical gluts and crises," and "the waste from idle capital and labor at all times." The example of the large corporations helped to show the way:

"Fifty years before, the consolidation of the industries of the country under national control would have seemed a very daring experiment to the most sanguine. But by a series of object lessons, seen and studied by all men, the great corporations had taught the people an entirely new set of ideas on the subject....It had come to be recognized as an axiom that the larger the business the simpler the principles that can be applied to it; that, as the machine is truer than the hand, so the system, which in a great concern does the work of the master's eye in a small business, turns out more accurate results. Thus it came about, thanks to the corporations themselves, when it was proposed that the

nation should assume their functions, the suggestion implied nothing which seemed impracticable even to the timid."

In Veblen's and Bellamy's analysis, the new industrial economy thrived on central control. They saw artisan production swept away by enormous economies of scale. They saw traditions and rules of thumb swept away by organization and system. They saw handicraft and common sense swept away by engineering and technical expertise. They saw these things and concluded that a new world was emerging in which a few experts would tell everyone else what to do.

The problem, in their view, was that the new world had not yet fully supplanted the old. The old traditions of private ownership and competition still refracted the logic of the machine; engineering remained subservient to profit. As a result, much of the productive power of the new industrial processes was wasted in either idleness or duplication; moreover, production was too often diverted from serving the needs of the many in order to satisfy the extravagances of a parasitic few.

This then was the goal of collectivism: to render industry less wasteful and more equitable by extending the principle of central control. Power would be stripped from various industrial fiefdoms and vested in the true center: the state. There it would be exercised, not for private gain by businessmen, but for the common good by public servants.

The logical extreme of such a program was the full-fledged socialism preached by Bellamy, but such radicalism never took firm hold in mainstream American public opinion. In the United States, the collectivist spirit was expressed more in proposals to reform private ownership through regulation and government spending than in plans to eliminate it altogether.

While the ambitions of radicals and reformers may have varied, their driving social vision was the same: to take the triumph of planning and organization at the factory level and apply it to society as a whole—in short, to engage in "social engineering."

It is commonly imagined today that the regulatory reforms of the Progressive Era and the New Deal were staunchly opposed by Big Business. All too often, however, leaders of the new corporate giants saw no room for competition in the industries they ran, and welcomed government intervention (short of expropriation). Judge Elbert Gary, the first chairman of the board of U.S. Steel, held weekly dinners with other steel executives to set prices. Gary defended this "cooperative plan," stating that "the law does not compel competition; it only prohibits an agreement not to compete." If such "friendly association" did run afoul of the antitrust law, Gary had another idea: "I would be very glad if we had some place we could go, to a responsible governmental authority, and say to them, 'Here are our facts and figures, here is our property, here our cost of production: now you tell us what we have the right to do and what prices we have the right to charge.'"

Precisely this approach was adopted in industry after industry—frequently with the support, and sometimes at the instigation, of the businesses involved. Thus, AT&T's president Theodore Vail reacted to AT&T's falling market share by lobbying for regulated monopoly status. Such a move, he argued, was necessary to ensure universal access: "It is not believed that this can be accomplished by separately controlled or distinct systems nor that there can be competition in the accepted sense of competition."

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In the midst of the Great Depression, confidence in market competition was at a low ebb in the business community as elsewhere. In 1931 Gerard Swope, president of General Electric, put forward a plan for the cartelization of industry, to be administered by trade associations; the U.S. Chamber of Commerce and the National Association of Manufacturers endorsed similar proposals. In 1933, in the famed first 100 days of the New Deal, the National Industrial Recovery Act put such cartelization into effect. Henry Harriman, president of the Chamber of Commerce, praised the new law as a "Magna Charta of industry and labor"; laissez faire, he contended, "must be replaced by a philosophy of planned national economy."

Ignoring Ignorance

The rejection of market competition, and consequent embrace of government-led social engineering, represented a misreading of industrialization at the most fundamental level. The social engineers simply assumed away the root problem of economics: the problem of ignorance, of figuring out what to make and how to make it. They assumed that these were purely technical issues whose solutions were already within the grasp of engineering. Accordingly, they believed that the most important economic problem was putting the people with that knowledge in charge and having them tell everyone else what to do. On those assumptions, private ownership and competition did indeed seem a hindrance.

What they failed to see was that the question of what to do is in fact enormously complicated, and cannot be answered without reference to what millions of consumers actually want. In particular, they did not understand that the despised pecuniary considerations of price and profit are indispensable in communicating those wants to producers, or that competition among producers—for both customers and investment capital—is the best way of ensuring that better answers to the question of what to do

are occasionally concocted.

For all of their fondness for engineering and scientific metaphors, the devotees of technocratic central planning abandoned the essential humility of the scientific method. Instead, they claimed that a small group of people had all the answers. Just at the time that industrialization was delegating brain work throughout the economy to an utterly unprecedented extent, an immensely powerful intellectual movement sprang forth which sought (albeit unwittingly) to restrict sharply the amount of brainpower applied to economic life.

The movement changed the country in waves: the Progressive Era and the New Deal, the mobilizations of the two world wars, and finally, the calamitous reign of "the best and the brightest" in the 1960s. As a predictable result, the country has been saddled with a set of rigid, unresponsive, and dysfunctional government policies, from the original sin of the Interstate Commerce Commission to the current bloated, sclerotic, $1.6 trillion a year mess. And of course, America's suffering at the hands of would-be social engineers has been mild compared to many other places in the world—most notably the former Communist bloc.

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Dumbing Down Work

As the misplaced faith in top-down control altered the larger American economy, so its effects were replayed in microcosm in the development of the internal structure of the new large corporations. Nowhere were those effects more destructive than in the area of management-labor relations.

In the early decades of industrialization, what happened on the factory floor remained largely outside the purview of owners and managers. How work was to be divided up, what procedures to follow, what tools should be used, who should do what, and what pace was appropriate—all of these were decided by the workers themselves (or, less idyllically, by their often brutal and domineering shop foremen).

That state of affairs was not conducive to high productivity. In an era of highly complex production operations and accelerating technological change, rules of thumb and received craft wisdom needed to give way to more systematic analysis of how work should be organized. Moreover, as long as workers controlled factory output, they could be relied upon—as normal, self-interested human beings who were typically working long hours under miserable conditions—to take it easy on themselves.

In the last decades of the 19th century and first decades of the 20th, owners and managers asserted and ultimately gained control over the production process. They did so under the banner of "scientific management," and their victory did indeed produce enormous gains. Management consultant Peter Drucker refers to this period as the "Productivity Revolution," and credits scientific management—or to use his terms, "the application of knowledge to work"—with the surging rise in living standards over the course of the 20th century. This cause and effect can be most readily seen in Henry Ford's development of the moving assembly line in 1913, and his inauguration of the $5.00 work day the following year.

Management's victory, though, was the result of a bitterly contested and often bloody struggle with labor. This conflict separated management and labor into opposing camps, and poisoned their relations with animosity and distrust that continue to this day. Consequently, the potential for even greater gains in productivity and living standards was wasted.

No doubt labor resistance to reorganization of the factory floor would have been considerable under the best of circumstances. Tension between management and labor was unavoidable given the harshness of much of the work; America in those days was a desperately poor country by current standards, and brutality in the workplace was one expression of that backwardness. Furthermore, the labor movement was imbued with collectivist anti-business sentiment, and was highly unlikely ever to cozy up with what it regarded as its class enemy.

Nevertheless, a great deal of the continuing acrimony between labor and management can be blamed on the top-down arrogance of the scientific management movement. This was particularly evident in the writings and career of Frederick Winslow Taylor, the founder and leading proponent of scientific management.

Taylor's contempt for the mental ability of the American factory worker was profound. He used the example of handling pig iron, "the simplest kind of human effort....A man simply stoops down and with his hands picks up a piece of iron, and then walks a short distance and drops it on the ground." That said, he continued: "I can say without the slightest hesitation that the science of handling pig-iron is so great that the man who is fit to handle pig-iron and is sufficiently phlegmatic and stupid to choose this for his occupation is rarely able to comprehend the science of handling pig-iron."

In line with such thinking, Taylor set forth the following goal for sound management: "All possible brain work should be removed from the shop and centered in the planning or lay-out department." Professionally trained managers, armed with Taylor's famous time and motion studies, should determine "the one best way" of doing every single task in the factory, and order the workers to do it that way and no other. The role of workers in this system was, according to Taylor, "to do what they are told to

do promptly and without asking questions or making suggestions." When questioned by workers, Taylor would commonly reply, "You are not supposed to think. There are other people paid for thinking around here."

Labor's reaction to Taylorism was understandably indignant. Samuel Gompers's assessment was typical: "So there you are, wage-workers in general, mere machines—considered industrially, of course....Not only your length, breadth, and thickness as a machine, but your grade of hardness, malleability, tractability, and general serviceability, can be ascertained, registered, and then employed as desirable. Science would thus get the most of you before you are sent to the junkpile."

But in the end, the labor movement did cede control of the production process; it moved its focus to organizing the work force on an industry-wide basis and improving wages and working conditions through collective bargaining. The triumph of scientific management, though, had forced a sharp cleavage between white collar and blue. As a result, there was a near total abdication of responsibility by the latter for improving the work of the company.

The triumph of scientific management forced a sharp cleavage between white collar and blue. As a result, there was a near total abdication of responsibility by the latter for improving the work of the company. Labor relations settled into an adversarial standoff, in which uncompetitively high wages were used to bribe the work force into accepting their mindless role.

As industries became unionized in the 1930s and '40s, labor relations settled into an uneasy adversarial standoff, in which uncompetitively high wages were used to bribe the work force into accepting their mindless role. Ironically, as labor unions sought standardized seniority-based wage scales, they ultimately came to out-Taylor Taylor, insisting on a byzantine structure of work rules that confined the responsibilities of workers within the narrowest possible limits.

Big Labor's surly accommodation with Big Business in the postwar period was a gilded prison. The pay was good, too good; it bought acquiescence in a work life that otherwise would have been intolerable. Consider these excerpts from *The End of the Line*, a compilation of interviews with workers at Ford's Michigan Truck Plant outside Detroit:

- "Intelligence didn't come into play unless you were on salary; you weren't really part of the decision-making process. The management made all the decisions; you had no responsibility."
- "It was like a war between management and the workers. For one side to get the other to do something, they had to bring out the guns and hold them to their heads. You would sometimes see sabotage....We used to have a breakdown once a week for a half hour because some guy would stick a tool in the line."
- "[I]f there was something I wanted from the supervisor and didn't get, I would let trucks go by without doing my job. I was no angel. Like everyone else, I would get away with whatever I could."
- "That first week I must have quit at least twenty times in my head. I wouldn't want to walk out in the middle of the day, so I would try to make it to quitting time. The next morning I always came back. It was the money."

Thus did scientific management and Big Labor squander the dispersed intelligence, skill, and experience on the front lines of production. The competitiveness of American industry certainly suffered; so did the souls of workers who were required every day to check their brains at the factory gate.

It was left to the Japanese, rebuilding from the wreckage of World War II, to find a better way. The Japanese junked the old top-down Taylor system for a bottom-up approach, one that uses workers' heads as well as their bodies.

In the Taylor system, managers determined the "one best way" once and for all time, incorporated it into product specifications and standard operating procedures, and then rammed it down workers' throats. In the Japanese *kaizen* (continuous improvement) system, workers are integrally involved, through "quality circles" and the like, in monitoring the work process statistically and adjusting it to make it run better—making incremental improvements as workers discover better ways of getting the job done. Thus, in the Taylor system brainpower was concentrated at the top, and used once (or at best episodically); in the Japanese system, brainpower is distributed, and used continuously. Ironically, the Japanese devised their new system under the tutelage of Americans W. Edwards Deming and Joseph Juran, prophets roundly ignored in their own country.

White-Collar Waste

In addition to wasting the potential of their workers, the new large corporations created hierarchical management bureaucracies that too often squandered their white-collar talent. Those bureaucracies became increasingly rigid and dysfunctional over time, choking off information flows so thoroughly that the people running the company often had no idea what they were doing, and skewing incentives so badly that rational action within the organization was frequently impossible. All the ills typically associated with Soviet commissariats could be found—in a much less malignant variety, to be sure—in America's great corporate headquarters.

In understanding what happened, it's important not to get carried away with bureaucracy-bashing. Bureaucracy, in its place and properly structured, is a wonderful thing. The fabulous burst of wealth creation brought about by industrialization was due not just to new energy sources and technologies, but new forms of organization. In the pre-industrial era, economic activity consisted of relatively simple tasks, and the business enterprises that

conducted them were accordingly simple in structure: single proprietorships or partnerships, managed according to personal knowledge and judgment.

With the coming of high-energy, high-speed, mechanized production, economic activity vaulted to a superhuman scale. The complexity of production processes, the number of people involved, the geographical extent, and the speed of raw material and finished good flows all exceeded the management capacity of traditional business enterprises. What was needed was a new complex form of business organization; what emerged, as chronicled by Alfred Chandler in his magisterial *The Visible Hand,* was the modern corporation, run by professional managers. Work became superhuman in structure as well as scale; in other words, it became bureaucratized.

The problem with the new large business organizations is that they failed to incorporate within their administrative structures the very features in the ambient market economy that gave rise to them in the first place: decentralized decision making, ceaseless experimentation, feedback loops that ensure good ideas from whatever source are copied and bad ones abandoned. Instead, they created management structures that were the opposite of the marketplace: rigid chains of command, narrow channelling of information flows, resistance to new ideas from unexpected sources. As a result, while American corporations were relatively good at implementing plans concocted at the top, they were much less good at improving those plans, or changing those plans, based on new information that came from outside the top ranks of management.

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The deficiencies in American management were not apparent, or at least not pressing, in the early days of industrialization. In the industries where the potential for mass production existed, the adoption of the new techniques generally meant a phenomenal increase in productivity. Accordingly, management systems that could implement and administer those techniques competently and reliably represented an enormous advance.

What evolved were management structures in which information flowed from the bottom up in prescribed channels, and directives then flowed back down. For their time, the new organizational forms were a considerable achievement: They coordinated economic activity at a scale and level of complexity previously unimagined. Despite their latent flaws, these organizations were thus still good enough to allow the new giant corporations to outperform anything that had come before.

And indeed, during the turbulent early decades of industrialization, American management was restlessly improving itself. Between the 1880s and the 1920s, a series of innovations did help to increase the brainpower of large corporations: R&D departments were established specifically to generate new useful knowledge; the intensification of advertising and market research increased the interaction between companies and their business environments; reorganization along multidivisional lines dispersed responsibility by giving full operational autonomy to product group managers.

Nothing fails like success, though, and the success of the new corporations bred a pervasive "if it ain't broke, don't fix it" mentality within the ranks of American management. By the 1920s, as the conversion to mass production was consolidated, further evolution more or less stopped. Efforts to make the corporation more open to change and new ideas—more like the marketplace—tailed off.

Instead, corruption set in. Corporations broke down into internal empires; information flows, and all too often trust, stopped at the departmental or divisional border. The "not invented here" syndrome rendered businesses perversely hostile to opportunities that arose from developments outside the corporation. Companies grew unimaginative about new ways to create consumer value as they lost touch with the consumer; marketing and salesmanship were too often treated as substitutes for paying attention to what consumers like and want. Management "by the numbers" treated financial manipulation, not creation of consumer value, as the key to corporate success.

This corruption plagued many of America's great industries, and none more so than the automotive industry. Resistance to innovation is well illustrated in an example from David Halberstam's *The Reckoning*. Ford Motor Company developed a new rust-proofing paint process called E-coat back in 1958; the process was expensive to install, however, and rusting often occurred after the company's warranties had expired. Ford's institutional obsession with cutting costs blinded it to an obvious opportunity to create value: "The men who had developed E-coat and the plant men who pushed for it considered it the key to a great increase in quality. Unfortunately, there was no way to quantify that improvement in terms of sales....How, after all, asked one of its proponents, did one put a price on a happy customer?" As a result, despite well-known problems with rusting cars, it took until 1984 until all Ford plants were equipped with E-coat.

The auto industry was also bedeviled by internal empire-building and the lack of cooperation across departmental lines. In *Rude Awakening*, Maryann Keller describes how it was at General Motors: "General Motors did not operate as one cohesive organization but, rather, as seven separate and distinct operations, each with its own insulated empire. It took three separate organizations—a car division, Fisher Body, and GMAD

[General Motors Assembly Division]—to build a single car. And at no time did they interface, except through the president. They were entirely vertical organizations." Thus a car division would design a new model, Fisher Body would then engineer it, and finally GMAD would assemble it—without anyone ever talking to each other. It was a system practically designed to generate delays and defects.

The effects of this kind of mismanagement were concealed for decades. Despite all its faults, this corrupted version of 1920s-style management persevered by default. Competition from the outside world was cut off, first by trade restrictions and depression in the interwar years, and then by the destruction of most of the rest of the world's industrial capacity by World War II. American industrial might dominated a ruined world; people mistakenly assumed that this was because and not in spite of American management.

Albeit from a dissident's perspective, John Kenneth Galbraith's writings typified this misperception. In 1967, he celebrated the unrivalled efficiency of the American corporate "planning system" in his bestselling *The New Industrial State*: "The mature corporation has readily at hand the means for controlling the prices at which it sells as well as those at which it buys. Similarly it has means for managing what the consumer buys at the prices which it controls. This control and management is required by its planning. The planning proceeds from the use of technology and capital, the commitment of time that these require and the diminished effectiveness of the market for specialized technical products and skills."

Galbraith wrote those words just as the Japanese wolf was approaching the door. In the aftermath of World War II, Japanese corporations developed new management systems that stressed continuous product improvement over financial manipulation, and cross-department cooperation over turf consciousness. Those systems were combined with, as described above, a new way of dealing with labor—one that did not ignore workers from the neck up. What followed, in the 1970s and '80s, was a competitive rout of American manufacturing.

The American corporation has been forced by this competitive challenge into a thoroughgoing restructuring along more market-like lines. This restructuring was much needed and will be highly beneficial over the long term; however, it should not be forgotten that the necessity for restructuring has exacted a heavy toll in wasted resources and dislocated lives. Those are the costs of arrogance and error.

The Open Economy

The new technologies and institutions of the industrial revolution opened up vistas of human experience that were previously all but unimagined. They created, for the first time in history, a society of widespread material abundance. They offered unprecedented opportunities for intellectual challenge in work. Brainpower, and its material effects, were transforming the world.

By current standards, however, conditions in the early days of industrialization were still primitive. Many modern comforts did not exist, and the existence or threat of real privation hung over large sections of the populace. Even with the new machines, production required great amounts of punishing manual labor. The factory floor was a rough place, occupied by rough, uneducated men. In the office, much of the work was routine and clerical. In the larger economy, cost structures often allowed profitable production only at a massive scale, thus favoring consolidation and concentration over vigorous competition. Those same cost structures frequently yielded standardized, least-common-denominator products.

Progress has been seriously impeded by the imposition of top-down control in both the political and economic spheres. The repudiation of market forces and principles was once considered progressive; its true effect, however, was reactionary, retarding the diffusion of brainpower throughout society that industrialization initiated.

The logic of market development, however, was hostile to all of those shortcomings; over time it has brought significant, sometimes sweeping, amelioration. Yet that progress has been seriously impeded by the imposition of top-down control in both the political and economic spheres. The repudiation of market forces and principles was once considered progressive; its true effect, however, was reactionary, retarding the diffusion of brainpower throughout society that industrialization initiated.

The embrace of top-down institutions can thus be seen as a kind of industrial counterrevolution. The legacy of this counterrevolution was to magnify and prolong the harshest and least attractive features of the industrial economy, and squelch its most benign and hopeful ones. We have moved away from the rough edges of the early industrial era in spite of, not because of, the grand designs of social engineers and technocratic elites.

Now, however, this reactionary order is passing from the scene, and the information revolution is upon us. The revolution is not, as some claim, that information has now become the source of all wealth. That has always been true; what is revolutionary is that we finally realize it. Seeing information at the center of things means seeing our own ignorance as the central challenge of social action. It means rejecting the notion that a few of us have all the answers. It means rejecting institutions that were founded on that notion, and embracing institutions that encourage experimentation and openness. In short, it means believing in freedom again. ®

Contributing Editor Brink Lindsey (102134.2224@compuserve.com) practices trade law in Washington, D.C.

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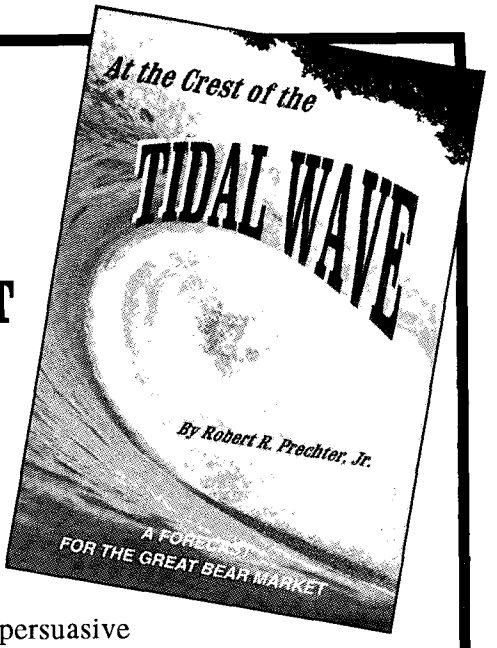

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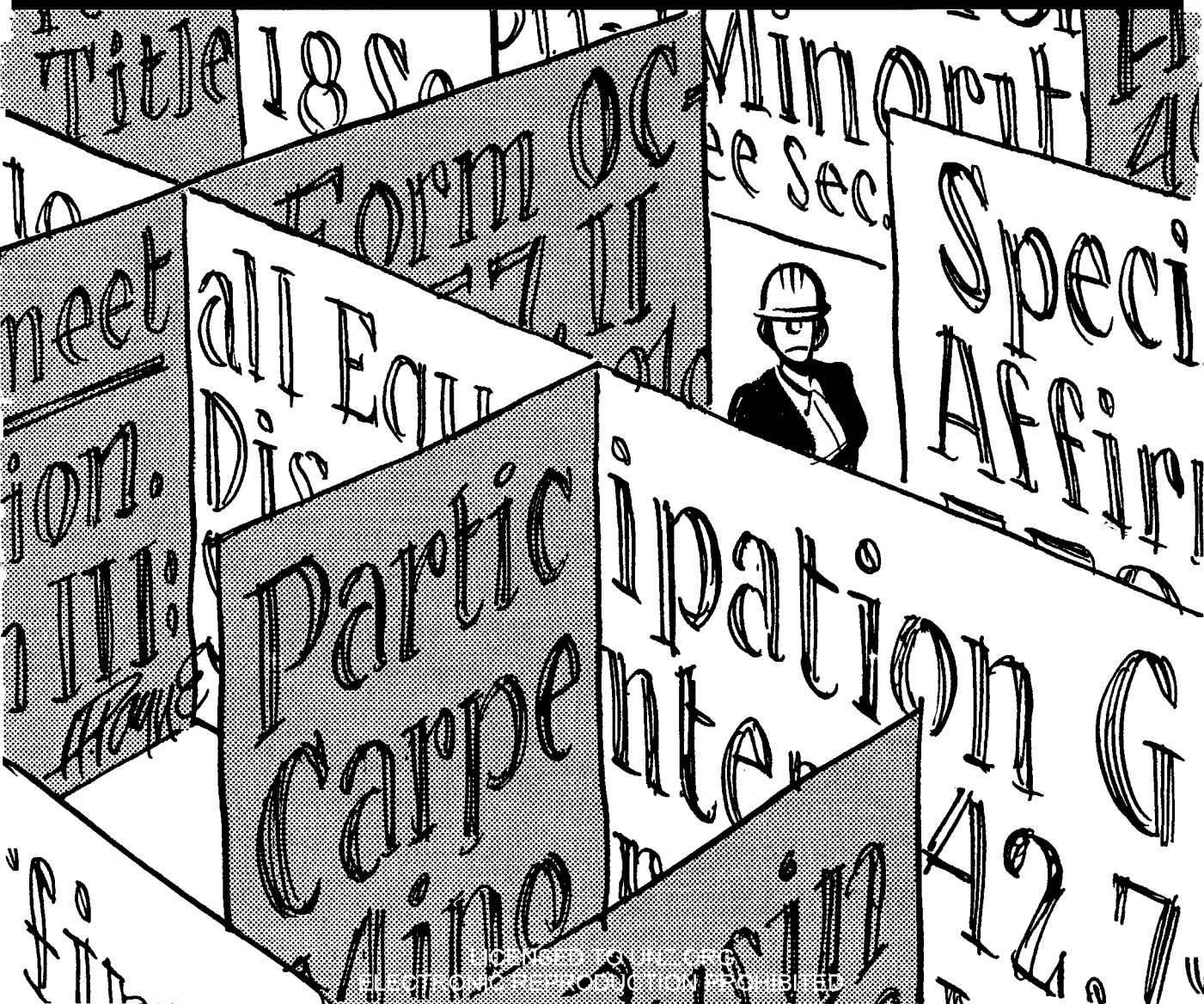
A small contractor learns affirmative action arithmetic

By Tama Starr



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Sensitive, compassionate people—like you and me—appreciate the benevolent impulses underlying affirmative action. Less well known is the cost, in terms of money, time, and sheer brain damage, that putting this doctrine into practice entails. As the employer of 87 skilled workers in three construction trades, plus support staff—who have always come in all colors, races, and genders without any help from me—I've experienced firsthand the excruciating reality of complying with affirmative action's bureaucratic edicts.

I submit for your disbelief an actual contract that my company undertook last summer. It is a typical contract that anyone in the construction trades would recognize. Accompany me on a journey through it. Your benevolence will never be the same again.

The job itself is straightforward: the fabrication and installation of a set of 15-foot-tall metal letters on the roof of a factory building. Doing the work is child's play compared with following the contract. The distinguishing features of the project are: a) the "progressive" character of the customer, a large publisher, and b) my city government's corporate welfare policy, which, by supporting the project with tax abatements and other subsidies, subjects it to the same equal-employment-opportunity requirements as a public project. Thus, four levels of affirmative action: corporate, city, state, and federal.

The main part of the contract, printed in normal-size type, is only two and a half pages long. It says, in essence, "You do the work, and we will pay you." Then there is a "Scope of Work," describing the work, and a set of drawings depicting the work. There is a set of "Special Conditions" containing provisions for *force majeure*, change orders, and warranties, and a discussion of the sales-tax exemption. There is a standard insurance certificate.

And then there is a 101-page "exhibit" consisting of 20 separate documents embodying the affirmative action requirements. Let's have a look at some highlights.

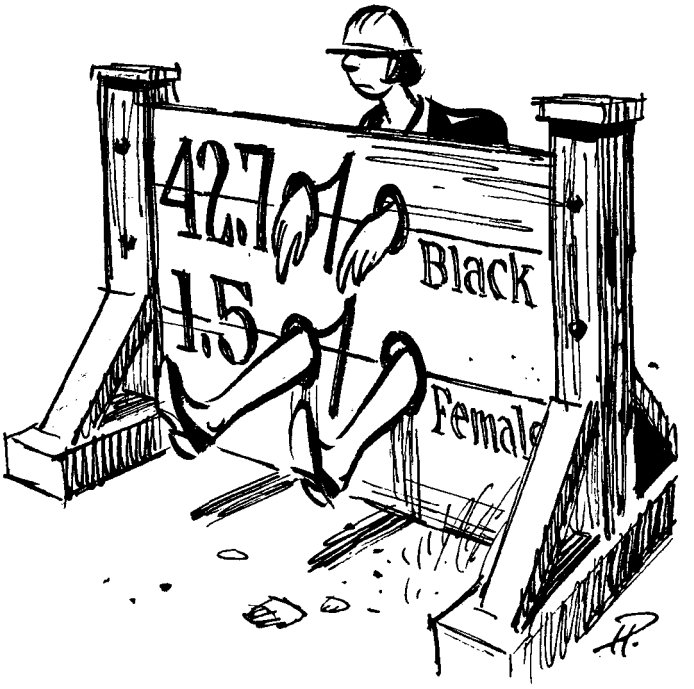
The first document is the oxymoronic "Affirmative Action/Non-Discrimination/MBE-WBE Requirement." It lists "participation goals" by trade. For example, carpenters on this job are expected to be 42.74 percent minority and 1.58 percent female. Iron workers, both ornamental and structural, are to be 58.53 percent minority and 7.63 percent female. There is no clue as to how those numbers were derived, but you can immediately see the value of a minority female iron worker. Don't think, however, if you are fortunate enough to have access to one, that you can circumvent the requirements by transferring her around, or by renting her to or from a competitor. The document sternly warns: "Compliance by [sic] the Contractor's specific affirmative action obligations required herein of minority and female employment and training must be substantially uniform throughout the length of this Trade Contract and in each trade. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Subcontractor's goals shall be a violation of this Trade Contract."

We are a union shop, which means that we hire only from within the unions' respective labor pools. For their part, the unions maintain quality control, putting all the workers through apprenticeship and education programs. But they never promised (who would have thought to ask?) to provide painters who are 62.57 percent minority and 3.52 percent female, as required here. And, warns the document, "neither the provisions of any collective bargaining agreement, nor the failure by a union" to refer the correctly composed work force "shall excuse the Contractor's obligations hereunder."

So we are commanded to direct our recruitment efforts "to schools with minority and female students, to minority, female and community organizations, and to minority and female recruitment and training organizations," and to keep careful records of the disposition of minority and female job applicants who come in off the street. But we can't hire off the street. No matter. We are not only required to "meet with union officials to inform them of the policy" and to "bargain with respect to the inclusion of [the policy] in all union agreements," but also to report any noncooperation by any union to the proper authorities, failure to report being itself a misdemeanor. This will certainly do wonders for our relationship with the unions (who, in fairness, are feeling the heavy hand of these requirements at least as keenly as we are).

Next, the document lists 16 "specific affirmative actions" to be taken, the first of which is to "assign two or more women to each Phase of the construction project." Now here's a problem. One of the phases is structural installation, which entails landing big steel and welding it while perched on a scaffold 100 feet or more above the ground, sometimes in zero-degree weather. For some reason, I don't get a lot of female applicants for this position. So if you know of any women—preferably minority and, even better, disabled—who would enjoy this work, please send them on over!

I suppose I could halfway comply with this provision by assigning myself. But the female-assignment provision is accom-



ILLUSTRATIONS: HENRY PAYNE

panied by the statement that I will "ensure and maintain a working environment free of harassment, intimidation, and coercion." And with all these requirements, I don't feel free of harassment, intimidation, and coercion at all. But maybe I'm not supposed to. I'm the boss, so I'm not in a protected class.

The rest of the 16 points (two pages of very small print) describe, in exquisite detail, the special recruitment, monitoring, notification, review, and record-keeping procedures to be undertaken with respect to hiring and cultivating minority and female employees. Most noteworthy here is the invasion of their privacy. I am required to "encourage present minority and female employees to recruit other minority persons and women." What form is this "encouragement" supposed to take? "Hello, Ms. Wong, I see you are Asian. Got any sisters at home?"

My favorite paragraph in this document is what I call the "desperate" clause: "Goals for minorities and a separate single goal for women have been established. The Contractor, however, is required...to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently the Contractor may be in violation hereof if a particular group is employed in a substantially desperate [sic] manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is underutilized)." So even after I've desperately hired Ms. Wong's sister as a high-mast welder, I may still be in trouble if there aren't enough female Aleuts or Samoans on the team.

Part II of this document provides for "meaningful participation" by Minority Business Enterprises and Women-Owned Business Enterprises (MBE/WBE). What is "meaningful participation"? It is defined in bold type and underlined: " **'Meaningful participation' shall mean that at least seventeen percent (17%) of the total dollar value of the construction contracts (including subcontracts) covering the Work are for the participation of Minority Business Enterprises and Women-Owned Business Enterprises, of which at least twelve percent (12%) are for the participation of Minority Business Enterprises and at least 5% [sic] are for the participation of Women-Owned Business Enterprises.**"

This section suggests interesting ideas for restructuring one's business, including forming joint ventures or partnerships with MBEs and WBEs, and "not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs," even (or especially) where one is required to provide bonds and/or insurance oneself. Again, there are impeccably detailed record-keeping requirements, including, most notably, "the reason for such decision" when any of the required discussions with MBEs and WBEs fails to result in a joint venture, partnership, or subcontract.

Part III summarizes and incorporates by reference the Mayor's Executive Order #50, which emphasizes, among other things, that the contractor "will not discriminate...on the basis of...race, color, creed, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference." (What, may one ask, is the distinction between "sexual orientation" and "affectional preference"? And does it matter, at least until the lawsuits come?) That is all very nice, but on the previous page, the contractor was *required* to discriminate, that is, to intervene positively, on the basis of race, sex, etc. Oh well.

This is not a trivial point. E.O. #50 provides for the Department of Labor Services to have access to all of your "books, records and accounts" to ascertain compliance. And the DLS can *hurt you bad* if you are not in compliance. It can not only void your contract, withhold payment for work you've already done, and "reduce the Contract payments by a percentage equal to that designated as the business enterprise goal percentage," but also physically enter your premises and "impose an employment program" (50.65B[iv]). But do not feel your rights are unprotected. The DLS can impose these sanctions only "after a hearing, held pursuant to the rules of the DLS."

The "employment program," by the way, may include sentencing your workers to "participation by minority, female and handicapped employees in career days, job fairs, youth motivation programs, and related activities in their communities." I'm sure they'll love that. But they've no choice. Among the crimes that can bring the wrath of the DLS down upon you is that your "minorities, women, handicapped, or older employees are excluded from or *are not participating in* company-sponsored activities or programs." (Emphasis added.) Your non-minorities, however, apparently can skip the company picnic with impunity.

The climax of the document is the contractor's agreement "to include the provisions of the foregoing paragraphs in every subcontract or purchase order to which it becomes a party...so that the provisions will be binding upon each Contractor or vendor." An interesting example of infinite recursion. The "foregoing paragraphs" include their own inclusion—so all subordinate contractors and vendors are required to include them in *their* sub-

contracts and purchase orders, ad infinitum. Clearly the intent is to infect the entire commercial community.

The dénouement is a promise to "refrain from entering into any contract...with a subcontractor who is not in compliance with the requirements of E.O. #50 and the rules and regulations promulgated thereunder." It's not clear how, exactly, one is supposed to know who is and who is not in compliance with the "requirements of E.O. #50" etc. Yet any failure to comply with any part of the agreement is a "material breach," subject to the punishments described above.

Among the piles of affirmative action documents a contractor in New York must deal with is one that emphasizes, among other things, that the contractor "will not discriminate...on the basis of...race, color, creed, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference." (What, may one ask, is the distinction between "sexual orientation" and "affectional preference"?) That is all very nice, but on the previous page, the contractor was *required* to discriminate, that is, to intervene positively, on the basis of race, sex, etc.

The second document in the exhibit is the customer's "EEO/Payroll Package," which, we are informed, has helpfully "been prepared to assist each contractor/subcontractor in meeting all Equal Opportunity/Affirmative Action requirements for this project." Item I reiterates the 17 percent MBE/WBE goal and instructs the contractor on the proper, appropriately complex procedure for undertaking "documented efforts" to meet the goal. Item II, "Minority and Female Workforce Participation Goals," requires compliance with "the Federal goals for the construction industry" (included later) and reiterates the "participation goals" for the various construction trades. It is interesting to note that while operating engineers are required to be 46.52 percent minority and 9.26 female, cement masons, required to be 37.73 percent minority, have to be just 0.00 percent female. Is this a misprint? Who is protecting the oppressed female cement masons? Class action, anybody?

Item III reiterates the requirement for compliance with E.O. #50 and requires "attendance at all meetings requested by the monitoring agency, the Division of Labor Services." Items IV through VII delineate the differences in reporting requirements between contracts over and under $1 million and companies over and under 100 employees. When contracts and companies grow past a certain size, the reporting requirements increase exponentially. Even Forrest Gump (a Protected Person under the Americans with Disabilities Act) would recognize the importance of keeping all contracts under $1 million and all companies under 100 employees. "Smaller is better" apparently is now public policy.

Items VII through XVII (there are two Items VII) describe the forms, certificates, documents, reports, letters, and statements required to document compliance. Item XVIII, "Sexual Harassment Fact Sheet," says, "Each contractor must include this fact sheet in all subcontracts." Another virus: Each subcontractor must include it in all of his subcontracts and purchase orders, and require those subcontractors and vendors to include it in theirs. The fact sheet offers examples of sexual harassment that not even your most imaginative subcontractors can have thought of.

The next document is the Mayor's Executive Order #50 itself (29 pages of tiny, single-spaced type), so you can't claim you haven't seen it. Next is the city's required "Construction Employment Report" (seven pages), of which perhaps the most interesting part is a chart breaking down the work force "for each trade currently employed by your company" into various categories segregated by sex, including white (non-Hispanic), black (non-Hispanic), Hispanic, Asian, and Native American. These charts must be filled out for journey-level workers, apprentices, helpers, and trainees. In our case, we must fill out 12 charts, covering all four levels of workers in each of our three trades, and submit them monthly. The contractor must also attach to these reports "All Collective Bargaining Agreements, Employment Application [sic], EEO Policy Statement and your most recent EEO-1 Report." Somebody up there sure loves paper.

What puzzles me is why these charts are restricted to race and sex. Why don't they include religion, age, marital status, sexual orientation, affectional preference, etc.? How else can I prove my innocence? But I'm sure we'll get around to that. The precedents are there.

Next are the "Less Than One Hundred (100) Employees Certificate" and the "Less Than $1,000,000 Subcontract Certificate," each bearing a legend to the effect that any incorrect data "may result in criminal prosecution."

Then we have the "Boilerplate for Equal Employment Opportunity Statement," a resounding personal affirmation by the company's CEO (me!) stating that "we will take specific action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status..." (clearly a lie, given the rest of the documents) and announcing that "[Name] has been appointed Director of our equal employment opportunity programs and will report directly to me on the results of such program [sic]." Interesting here is the implied admission of guilt. "[Name]'s responsibilities include...assisting in the identification of problem areas" and "assisting line management in arriving at solutions to problems." The possibility that there are no problems is assumed away.

A small but far-reaching statement: "To ensure adherence to

this policy, performance evaluations for supervisory personnel shall include ratings on their equal employment opportunity efforts and results." Some companies actually take this seriously. "Sorry, Sally. Your team invented a better mousetrap and added $15 million to our bottom line. But they were the wrong color, so it doesn't count."

"Additionally," the boilerplate section continues, "in furtherance of our equal employment opportunity commitment [Contractor name] shall *insist* [emphasis added] that labor unions and other recruiting sources actively recruit and refer members of all protected groups for all positions, incorporate non-discriminatory provisions in all its contracts and purchase orders [yet another virus] and include the EEO logo, slogan or statement in all solicitations or advertisements for employees."

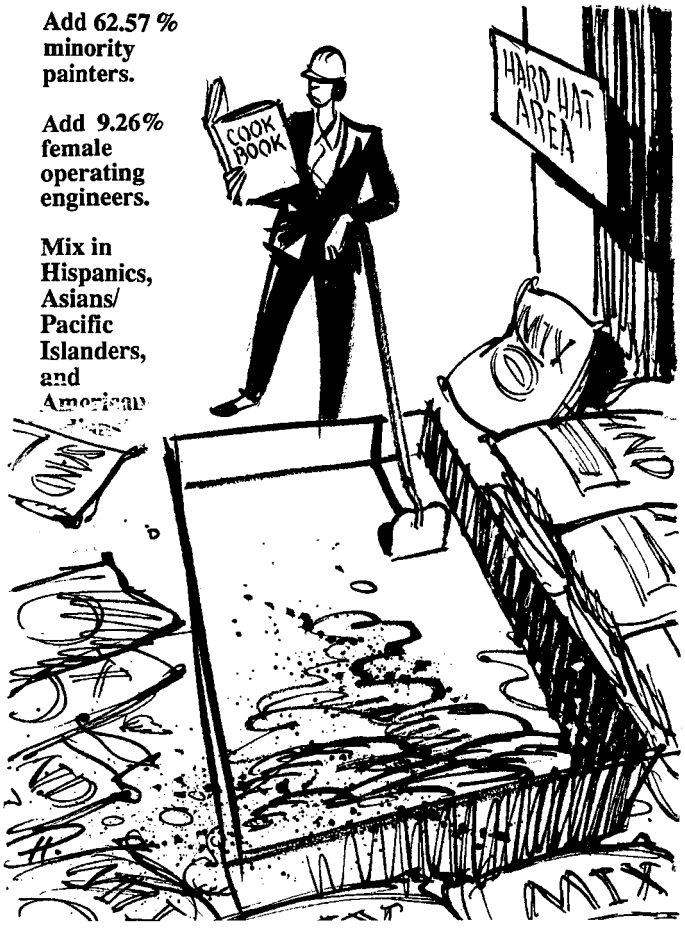
How, I wonder, is my insistence to be measured? Is it worth a dollar an hour for all employees? Ten dollars an hour? Because in labor negotiations, every insistence has a price.

The next document is the "Contractor's Affirmative Action Plan," containing a chart called "Summary of Bid Activity with MBE and WBE Subcontractors/Vendors" that requires a listing of "all unsuccessful M/WBE subcontractors/vendors" by name, trade/item, date and amount of bid, date of elimination, and reason for elimination. Below the chart, above the notary seal, is a space for "Additional explanation of elimination: Include meetings held for negotiation, etc. (Use additional sheet if necessary)." I can easily imagine that any of the ordinary reasons for turning down a vendor or subcontractor—bad reputation, inability to perform work, criminality—might be considered to have a racist component and thereby seal one's doom.

Then comes the "Contractor/Subcontractor Affirmative Action Commitment," requiring the contractor to swear fealty once again by initialing various affirmations, and the weekly "Wage Requirement Letter," including space for each worker's name, address, Social Security number, race, sex, work classification, hours worked, rate of pay, deductions, and net wages. Interesting, again, how much privacy the workers give up for the privilege of participation in this brave new nondiscriminatory world. The document also contains a separately signed affirmation that "Contractor/Subcontractor certifies compliance with all Federal, State and Local EEO Requirements" (as if one could possibly understand what they are) and a warning that "the wilful [sic] falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution see section 1001 [sic] of Title 18 and Section 231 of Title 31 of the United States Code." This part is in teeny-tiny print and very difficult to read.

The next five pages, apparently handwritten by a diligent sixth-grader, are instructions on "How to Complete the Payroll Forms." They offer many helpful hints. Under "work classification," for example, they say, "Fill in the classification exactly as it appears on the determination. If classification is for a power equipment operator, indicate type, size, horsepower." But they do not ask for the color of the horse.

The next document, "Workforce Projection," is important because it offers a rescue for those contractors whose race and sex



composition is below par. It allows you to anticipate compliance by listing, for each job category (brick masons, equipment operators, etc.) your "Current Employees to be Assigned to Contract," both "None-Minority [sic]" (male and female) and "Minority" (male and female), and the "Projected New Hires" in these categories that will bring you into compliance. The document ends, "The contractor acknowledges that, to the extent that this workforce projection does not reflect anticipated achievement of the goals for minority and female employment contained in the contract for work on this project, it will work closely with the general contractor and resourse [sic] and referral sources to identify, consider, and employ qualified individuals whose participation will enable the contractor to achieve the goals." What a break.

Next is Form OC-257, the "Monthly Employment Utilization Report," which lists, for all trades and classifications, by "Work Hours of Employment (Federal & Non-Federal)," total employees (male and female), non-Hispanic blacks (male and female), Hispanics (male and female), Asians/Pacific Islanders (male and female), and American Indians/Alaskan Natives (male and female). It also breaks the total number of minorities down by sex and indicates percentages for total minorities, total females, and total female minorities. You won't have failed to notice—especially if you are the person filling out the forms—that these classifications are different from the ones required above. This report must be submitted monthly, and, needless to say, any inaccuracy constitutes a crime.

For those whose skills at statistical analysis may be sub-par,

help is available. See Mayor's Executive Order #50: "The statistical criteria for evaluating the composition of the contractor's workforce will be the following: (i) the term 'underutilization' means a statistically significant disparity between the employment of members of a racial, ethnic, or sexual group and their availability as determined by the Bureau utilization analysis; and (ii) the term 'utilization analysis' will mean an analysis of the contractor's workforce using standard statistical techniques to test a null hypothesis that utilization of a given protected group is within acceptable limits, given its availability. For the purpose of these regulations, the null hypothesis will be rejected (i.e., underutilization will be assumed) whenever there is reason to believe that the utilization rate is below the availability rate at the 80% level of significance." Got it? Good.

Next are a "Sample Letter" requesting Apprentice Certificates for personnel meeting the approved race/gender tests, a helpful list of "Recruitment Sources for Minority/Female Construction Workers," and the "Sexual Harassment Fact Sheet," which goes to considerable lengths to expand the definition of sexual harassment beyond the "most widely recognized pattern ...in which a male supervisor sexually harasses a female employee."

The last document in the package is 26 pages of tiny print in two columns: Part 60-3 of the Office of Federal Contract Compliance Programs, the federal "Uniform Guidelines on Employee Selection Procedures." There are discrepancies between it and E.O. #50 and the other documents, but what can you do? You are a contractor with a work force to support, and you want the job. So you close your eyes and hope for the best.

The burden of all these requirements is a heavy one. I had to send my new Director of EEO Compliance (formerly the payroll manager) to school in New Jersey for two days to learn how to fill out the reports for this contract. The paperwork required to comply with the contract nearly outweighs the steel. Furthermore, the presumption of racial and sexual villainy criminalizes everybody and invites litigation—besides making us the laughingstock of the world.

I discussed this phenomenon with the Dallas-based CEO of another company in my industry that is four times the size of mine. He said, "Good companies run away! You won't see me bidding on any kind of government or government-subsidized work." So the government will get what it wants: contractors whose race/gender composition meets government goals, while taxpayers, as usual, foot the bill: in increased costs, in substandard work, and in the payroll of the genetically approved bureaucrats who scrutinize the reports.

It is not enough to repudiate affirmative action at the polls. It has become an ideology, embodied in layers of case law, executive orders, and consent decrees, as well as in the corporate culture of our largest employers and customers. But let us not despair. If we accept these conditions as facts of life, we have the opportunity for a happy solution.

The affirmative action requirements delineate the differences in reporting requirements between contracts over and under $1 million and companies over and under 100 employees. When contracts and companies grow past a certain size, the reporting requirements increase exponentially. Even Forrest Gump (a Protected Person under the Americans with Disabilities Act) would recognize the importance of keeping all contracts under $1 million and all companies under 100 employees. "Smaller is better" apparently is now public policy.

The problem, especially for smaller companies that don't have millions of employees, is that while the goals are exact, the means of meeting them are crude. How do you really know that your electricians are 33.99 percent minority and 1.84 percent female, as required? The loss of one worker of the approved hue may necessitate firing another of a different hue to maintain the desired balance. This is unfair. But genetic analysis can solve the problem.

Hardly any Americans today are racially pure. Up to 95 percent of those checking certain categories on the census form could just as well check "multiracial" if that were an option. In the 204 years since the first U.S. census, we have used at least 26 racial categories because we couldn't decide what they are; currently, such groups as Arab Americans and Azorians (Afro-Portuguese) are lobbying for their own classifications. Advances in biotechnology should enable us to end the confusion. We can investigate the DNA of all job applicants and candidates for promotion, isolate racial markers, and, by means of simple, weight-averaged mathematics (per E.O. #50), identify the workers whose characteristics we require.

From there, it is only a small step to the genetic engineering that will enable us to *create* the sociobiologically desirable work force of the future. Want a female operating engineer who is one-third Caucasian, one-twelfth Pacific Islander, one-quarter Hispanic, one-sixth Asian, and one-sixth African-American? No problem! This will require making projections 20 years or so in advance, but isn't that economic planning at its best? I can foresee platoons of forepersons, journeyfolk, and apprentices, all genetically predisposed to their assigned occupations and trades, and all of the exact racial, ethnic, and even hormonal mix that nondiscrimination requires. What a beautiful, inspirational, glorious rainbow it will be. I can hardly wait. Can you? ®

Tama Starr (TStarr@ix.netcom.com) is president of The Artkraft Strauss Sign Corp. in New York City. Her latest book is Eve's Revenge: Saints, Sinners, and Stand-Up Sisters on the Ultimate Extinction of Men *(Harcourt Brace & Co.).*

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VIEW MASTERS

The audience's power over media's message

by Nick Gillespie

Sad but true story: When I was in the fourth grade, some well-meaning teachers arranged a special viewing of the movie *Charly*, which had been released a few years earlier. Based on the novella *Flowers for Algernon*, the film tells the story of a mildly retarded man named Charly Gordon who, through an experimental surgical procedure, becomes a prodigious intellect. The beneficial effects, however, turn out to be temporary and Charly eventually reverts back to his original level of intelligence—tragically conscious of the enfeebling of his own mind. It's a good story, well told and well acted (Cliff Robertson won an Academy Award for the title role).

Although my teachers had no reason to believe we were a particularly mean-spirited crew to begin with, they figured, I assume, that the movie would inculcate a sense of sympathy so that we would be more sensitive to mentally impaired individuals. We walked away from the theater having learned quite a different lesson, though.

During the film, whenever Charly's co-workers (who *are* a mean-spirited crew) make a mistake, they inevitably quip, "I pulled a Charly Gordon." The day after we saw the movie, a student knocked over a display in the back of a classroom and, as the teacher began to upbraid him, he turned his palms outward and shrugged. "I pulled a Charly Gordon," he explained as the class erupted into laughter. By the end of the day, the phrase had become a ubiquitous defense for any and all manner of goof-up, mistake, or academic error. And for weeks after, kids—boys and girls, teachers' pets and class cut-ups—hurled the epithet *Charly Gordon* as an all-purpose invective. Every time the teachers heard the phrase, you could see them grit their teeth and shake their heads—they had no one to blame but themselves.

KRISTEN MELLON

Besides the self-evident truth that children like to disappoint their elders, there's a larger point to this story, one that bears on the recent and seemingly endless attempts to police popular culture: *The audience has a mind of its own.* Individuals sitting in a theater, or watching television, or listening to a CD don't always see and hear things the way they're "supposed" to.

Consider TV, for instance. "People talk at it, through it, and around it," observes Constance Penley, a professor of film and women's studies at the University of California, Santa Barbara, who has extensively studied "fan" communities. The one thing they *don't* do is merely absorb it, notes Penley, one of a growing number of scholars who stress the audience's role in constructing meaning and value in popular culture. Such media analysts say that consumers of popular culture are not that different from consumers of, say, food and clothing—that is, they are engaged, knowledgeable, discriminating, and self-interested.

That would be news to most participants in the public debate over depictions of sex and violence in movies, TV, and music. Liberals and conservatives are as tight as Beavis and Butt-head in agreeing that consumers of popular culture—the very people who make it popular—are little more than tools of the trade. Joe Sixpack and Sally Baglunch—you and I—aren't characters in this script. Just like TV sets or radios, we are dumb receivers that simply transmit whatever is broadcast to us. We do not look at movie screens; we *are* movie screens, and Hollywood merely projects morality—good, bad, or indifferent—onto us.

"We have reached the point where our popular culture threatens to undermine our character as a nation," Bob Dole thundered last summer in denouncing "nightmares of depravity" and calling for movies that promote "family values." "Bob Dole is a dope," responded actor-director Rob Reiner, a self-described liberal activist. Fair enough, but it apparently takes one to know one: "Hollywood should not be making

exploitive violent and exploitive sex films. I think we have a responsibility [to viewers] not to poison their souls," continued Reiner, who rose to prominence playing the role of Meathead on *All in the Family*.

Token antagonism, then, belies fundamental agreement: Pop culture can undermine (or, implicitly, ennoble) our character; movies can poison (or save) our souls. There is no sense that the ticket-buying public might have a say in the matter, that we might be responsible for our own damnation. Indeed, one of the most striking characteristics of the continuing public discussion regarding popular culture is the eerie sense of solidarity between feuding politicians and players. Scratch the surface and everyone from Bill Clinton to Charlton Heston, Newt Gingrich to Chevy Chase, Janet Reno to Sally Field, agrees: Movies, music, and TV should be the moral equivalent of a high colonic, Sunday school every damn day of the week.

The interplay between pop and its audience is far more complicated than most of its critics acknowledge. It's not just that people such as Bob Dole and William Bennett don't have a solid working knowledge of popular culture. Even more important, they don't understand the *experience* of interacting with pop culture, of how individuals react, respond, and revise what they see and hear.

This isn't to suggest that popular culture has no effect on how we think, feel, or act, that we exist somehow forever and apart from what we watch and listen to. But the interplay between pop and its audience is far more complicated than most of its critics acknowledge. It's not just that people such as Bob Dole, who admitted that he hadn't even seen the movies he criticized, and William Bennett, who has most recently lambasted daytime talk shows, don't have a solid working knowledge of popular culture. Even more important, they don't understand the *experience* of interacting with pop culture, of how individuals react, respond, and revise what they see and hear.

Of course, it is hardly surprising that denizens of Washington and Tinseltown frame the debate so that all interpretive power resides with would-be government regulators and entertainment industry types. Clearly, it makes sense for them to conceptualize popular culture as a top-down affair, one best dealt with by broadcasters and bureaucrats. This consensus, however, has implications far beyond the well-worn notion that entertainment should be properly didactic.

Because it assumes that the viewer, the listener, or the audience member is a passive receiver of popular culture, this consensus must inevitably result in calls for regulation by the government (such as the V-chip, which is part of both the House and Senate telecommunications bills) or paternalism by producers ("More and more we're tending toward all-audience films ...that have civic values in them," Motion Picture Association of America head Jack Valenti told the *Los Angeles Times*). The viewer simply can't be trusted to handle difficult, sensitive, ironic material—or to bring his own interpretation to bear on what he sees.

Hence the focus on "context," which inevitably refers to the narrative context of a given work. Pop culture regulators assume that if sex and violence are shown within a "moral" framework, the viewer will absorb that framework and, presumably, act accordingly.

In a symposium on media violence in *Time* magazine, Sen. Bill Bradley (D-N.J.) noted, "Violence without context and sex without attachment come into our homes too frequently in ways that we cannot control unless we are monitoring the television constantly." Bradley didn't, however, discuss the contexts and attachments *into* which shows are broadcast. This includes not only how we view TV but, for example, family structure. Now more than ever, technologies such as VCRs and remote controls allow individuals to create their own viewing contexts: We channel-surf, flicking between dozens of stations, switching between a ball game and a performance of *Oedipus Rex*. We fast-forward through commercials and coming attractions, or stop the tape altogether. Simultaneously, paradoxically, we are both bombarded with more and more media signals and have more and more control over what we watch and when we watch it.

What is on the screen or on the stereo is not irrelevant, of course. But it matters far less than one might suppose. Individuals interpret and reconstruct what they see and hear the way they want to. In a classroom, interpretations can be graded as better or worse, depending on the instructor's criteria. But there is no analogous oversight in the real world and people are free to spin out their own interpretations and cross-references. *Reductio ad absurdum:* Mark David Chapman read *The Catcher in the Rye* as legitimizing his murder of John Lennon. Clearly, this is not an A+ interpretation of the novel, but it is an interpretation nonetheless. And it points to a simple truth: The most relevant interpretive context is not the producer's but the consumer's.

A similar fixation on and extremely limited definition of context infuses the recently released *UCLA Television Monitoring Report*. The study, underwritten by the broadcast networks after Sen. Paul Simon (D-Ill.) threatened them with governmental action in 1993, charts "violence" in the 1994–95 TV season, including prime-time series, made-for-TV movies and miniseries, theatrical films shown on TV, on-air promotions for network shows, and Saturday morning children's programming. The authors go to great pains to distinguish between "appropriate" and "inappropriate" violence, stressing, "Context is the key to the determination of whether or not the use of violence is appropriate." In determining whether violence is objectionable, they rely on a series of questions—"Is the violence integral to the story?," "Is the violence glorified?," "Is the violence intentional or reactional?," etc.—that speaks only to authorial intentions. While such distinctions may allow for a moral (and aesthetic) judgment of a particular program, they don't speak to the viewer's experi-

ence. If a viewer, for instance, tunes into or out of a show midway through, he may have no idea of whether violence is integral to the story.

When viewers are mentioned in the UCLA study, they are typically characterized as unwitting dupes. In a discussion of "Misleading Titles," for instance, the report focuses on two made-for-TV movies, *Falling For You* and *Gramps*. *Falling For You* featured a serial killer with a taste for defenestration, while *Gramps* told the story of "an outwardly charming but psychotic grandfather" who murders his daughter-in-law and tries to kill a number of children.

"Ironically, while some films with violent titles were relatively non-violent, two of the most violent television movies of the season had seriously misleading titles promising innocent family fare," says the report. "*Falling for You* and *Gramps* promised content very different from what was delivered. This is a particular problem given the fact that these shows lacked advisories. Had there been advisories, viewers would have learned that the misleadingly titled movies...contained intense acts of violence. Starring likable celebrities Jenny Garth and Andy Griffith and lacking advisories, these stories appear to be about falling in love and a kindly old grandfather."

One wonders what the authors would make of, say, *Of Mice and Men* ("Contrary to the title, rodents were of minimal importance to the plot, which contained a good deal of sex and violence...") or *The Neverending Story* ("Oddly, the film's running time was only two hours and 10 minutes..."). They dismiss out of hand the idea that viewers would understand, let alone enjoy, the irony inherent in titles like *Falling For You* and *Gramps*. Would it be better if *Gramps* had been called something like *My Old Man Is An Outwardly Charming But Psychotic Grandfather*? (Curiously, the authors criticize "ominous and threatening titles that imply the show will be violent," such as *Bonanza: Under Attack*, *Deadline for Murder*, *Dangerous Intentions*, and *With Hostile Intent*, even when such titles are accurate.)

The authors imply viewers lack virtually any critical faculties or knowledge independent of what program producers feed them. For starters, they assume we determine what we watch based solely—or largely, at least—on titles. In fact, that decision is based on a variety of information—promos, capsule summaries, reviews—some within industry control, some not. And when a performer steps out of character, that very fact is usually stressed in the publicity build-up as a marketing point. Similarly, although certain stars are identified with certain types of characters (Andy Griffith=Sheriff Andy Taylor=Matlock=Good Family Fun), few people respond with Pavlovian certainty to any given actor or actress's efforts—the nature of the particular product matters greatly.

Critics usually charge that pop culture, in seeking the broadest audience possible, appeals to the lowest common denominator and thereby cheapens and coarsens society. Most critics take the argument a step further and claim that, even as pop culture gives the people what they want, it destroys consumers' critical faculties, effectively infantalizing them.

The notion of TV viewers and consumers of pop culture as intellectual couch potatoes closely parallels longstanding conventional scholarly analyses of how popular culture works. As with the political consensus, the intellectual indictment crosses traditional right/left boundaries. Critics usually charge that pop culture, in seeking the broadest audience possible, appeals to the lowest common denominator and thereby cheapens and coarsens society. Most critics take the argument a step further and claim that, even as pop culture gives the people what they want, it destroys consumers' critical faculties, effectively infantalizing them.

Consider, for instance, conservative Allan Bloom's commentary on rock music. In *The Closing of the American Mind* (1987), Bloom writes, "[R]ock music has one appeal only, a barbaric appeal, to sexual desire—not love, not eros, but sexual desire undeveloped and untutored....My concern here is not with the moral effects of this music—whether it leads to sex, violence, or drugs. The issue here is its effect on education, and I believe it ruins the imagination of young people and makes it very difficult for them to have a passionate relationship to the art and thought that are the substance of liberal education."

Television can lay claim to the status of most-favored punching bag and academic attacks on the small screen are representative of broader indictments of pop culture. Watching the idiot box, goes the argument, turns viewers into idiots. As their titles suggest, books such as *The Plug-In Drug*, *Media: The Second God*, *The Glass Teat* (and its sequel, *The Other Glass Teat*), and *Telegarbage* attempt to detail just how horrible and intellectually enervating the medium actually is.

Boxed In: The Culture of TV (1988), by Mark Crispin Miller, a left-leaning media critic and professor at Johns Hopkins University, provides a good example. "Those who have grown up watching television are not, because of all that gaping, now automatically adept at visual interpretation. That spectatorial 'experience' is passive, mesmeric, undiscriminating, and therefore not conducive to the refinement of the critical faculties," writes Miller.

From politicians and intellectuals alike, mass culture stands charged with and convicted of sexing us up, predisposing us toward violence, and dumbing us down.

But if we are neither robotic stooges programmed by the shows we watch nor trained dogs drooling every time certain bells are rung, just how do we interact with popular culture? Not surprisingly, most regulation-minded pols and intellectual critics discuss pop in terms that mirror what they know best: A podium from which a leader or professor lectures to audiences who (they assume) pay rapt attention to every uttered pearl of wisdom. But the operative principle in popular culture (as in the best politics

and teaching) is dialogue, as opposed to monologue.

Newer models of the consumption of popular culture have a lot in common with a show such as Comedy Central's *Mystery Science Theatre 3000*, in which wise-cracking characters watch B movies and provide running commentary. The characters in *MST3K* represent what's known in literary studies as "resisting readers." They don't merely soak up what they see, they actively process information, spin it to their own purposes, and critique it. The same goes for Beavis and Butt-head, the animated whipping boys of would-be censors. Even they don't watch videos the way they're "supposed" to.

Newer models of the consumption of popular culture have a lot in common with a show such as *Mystery Science Theatre 3000*, in which wise-cracking characters watch B movies and provide running commentary. The characters in *MST3K* represent what's known in literary studies as "resisting readers." They don't merely soak up what they see, they process information, spin it to their own purposes, and critique it.

Think of the choices you make—consciously—while, say, watching TV. You turn it on, you change the channels. Maybe you talk back to the screen (not quite the sign of insanity it once was). If you are with friends, you explicate what's on screen, hash out interpretations, or perhaps start talking about something completely unrelated. Maybe you call someone to discuss what you're watching. If you're online, you might post your comments on an appropriate bulletin board. But the point is that you react, and not always in ways the producer wants (sometimes you turn off the set altogether). In this sense, media have always been interactive.

Such critical engagement with pop culture texts is perhaps most clearly visible in the various fan "communities" that spring up around TV shows, film stars, and bands. "Fan critics pull characters and narrative issues from the margins; they focus on details that are excessive or peripheral to the primary plots but gain significance within the fans' own conceptions," writes Henry Jenkins, a professor of literature at Massachusetts Institute of Technology, in *Textual Poachers: Television Fans & Participatory Culture* (1992).

Jenkins has studied fan communities based around TV shows such as *Star Trek*, *Twin Peaks*, *Beauty and the Beast*, *The Avengers*, *Remington Steele*, and *Dr. Who*. (Although fan communities have developed around any and all manner of shows, Jenkins notes that science fiction–oriented groups seem to predominate. He chalks this up to "the utopian possibilities always embedded within" the genre; that is, science fiction explicitly attempts to create and explore new worlds and social possibilities.) Some of these groups are quite formal, holding regular meetings, circulating newsletters, and staging conventions, while others are less structured.

Central to Jenkins's "reading" of fan activity are notions of rereading and appropriation. Among other fan-generated artifacts, Jenkins describes fans who create music videos by splicing together shots from their favorite shows in new sequences and adding a soundtrack. Sometimes, the process is quite simple and humorous, as in a video that weds the song "Bad, Bad Leroy Brown" with footage from the *Star Wars* movies. Others are more ambitious: Using "Hungarian Rhapsody" for music, a video art group known as "the California Crew" created a 189-shot montage that included footage from *Remington Steele*, *Magnum P.I.*, *Riptide*, *Moonlighting*, *Hunter*, *Simon and Simon*, and other shows. The video's "plot" is itself a sly commentary on intertextuality: The various characters assemble at the Universal Sheraton Hotel, a location at which each series had filmed, to attend a detectives convention and then try to solve the "murder" of TV producer Stephen J. Cannell (who once had a cameo on a *Magnum, P.I.* episode). "Working entirely from 'found footage,' California Crew constructs a compelling and coherent crossover," writes Jenkins.

Other fan-generated texts are decidedly more outrageous. In an essay included in *Technoculture*, a 1991 collection she co-edited, Constance Penley, the UC-Santa Barbara professor, analyzed the phenomenon of *Star Trek* "K/S" or "slash" fandom. "Slash" revolves around the creation of fan-generated homosexual pornography involving the characters of Capt. Kirk and Mr. Spock. (The term *slash* refers to the slash between K and S and serves as a code to those purchasing fanzines through the mail.)

While slash fandom—largely made up of heterosexual women—may strike even diehard Trekkies as strange, Penley convincingly argues that the phenomenon demonstrates how people interact with popular culture "texts." Slash fans, says Penley, also use *Star Trek* as a way of creating a community of like-minded people. More important, writes Penley, "Slash fans do more than 'make do'; they make. Not only have they remade the *Star Trek* fictional universe to their own desiring ends, they have achieved it by enthusiastically mimicking the technologies of mass-market cultural production, and by constantly debating their own relation, as women, to those technologies."

Although Penley refrains from generalizing from the activity of slash fans—for one thing, they actually produce literal texts of their own—she says that "slash is suggestive of various ways people react to mass or popular culture." And, especially in light of the current debate over popular culture, says Penley, it is important to realize all viewers or consumers have "agency": They *process* what they see or hear—they do not merely lap it up. On the other hand, Penley says, "Politicians, producers, and advertisers want to believe that everything they say is accepted as intended."

MIT's Jenkins agrees that producers and regulators of popular culture share a common goal: control of an audience that is inherently beyond control. Although they obviously benefit from

pleasing consumers, producers of popular culture have an ambivalent relationship with their audience, says Jenkins. That's because fans don't merely accept what they are given—they actively appropriate or reshape things to their own liking. Such activity can take any number of forms, from letter-writing campaigns, to producing "unauthorized" novels, stories, and song cycles, to recutting videotaped footage into "new" episodes. In an age where photocopying, audio sampling, videotaping, and computer technology make it ever easier for fans to cut and paste their own versions of pop culture, it is increasingly difficult for original producers to control all representations of their product, says Jenkins, who notes that *Star Trek* distributor Viacom has cracked down on fan clubs in Australia over fan-generated materials.

Reining in popular culture is messy, difficult, and doesn't make a whole lot of sense. Regulators and paternalists are in the difficult position of stanching the dynamic flow of culture. They can outlaw "gratuitous" violence, censor inflammatory lyrics, plant a V-chip in every television in the country. But they will still be frustrated in their attempts to keep pop culture—and its creators—in line.

Moral regulators face a more daunting task. "A top-down conception of culture goes back to the very roots of the concept of *culture*," says Jenkins. "Educational, intellectual, or political elites assume that the mass has no taste or culture of its own, that culture can be used by elites to refine the tastes of the mass." As a result, says Jenkins, reformers have an uneasy relationship to popular culture: They like it because it can be used to push certain types of "good" beliefs. But that also means that pop can be used to present competing messages. "For the Clintons and the Doles," says Jenkins, "it's an either/or proposition. Either movies, TV, and music teach good behavior or else they're teaching bad behavior."

But that dichotomy runs up a blind alley, says Jenkins. There is simply no way to effectively police popular culture because that would mean controlling every individual exposed to it. "Culture is something we all participate in," says Jenkins. "We're all in dialogue with the cultural materials that come out there."

The dialogue Jenkins mentions extends beyond media-related culture as well. Consider two examples that range far beyond the unholy trinity of TV, movies, and music, and that point out just as strongly the fallacy of reining in pop culture: pogs and the use of "blunt" cigars for smoking pot.

Pogs, hailed and bemoaned as "the marbles of the '90s," are colorfully decorated, silver-dollar-sized cardboard circles that kids play with. Costing anywhere from a dime up to a couple of dollars, pogs are currently a multimillion-dollar-a-year industry, complete with "official" world championships and trademark disputes galore. A number of schools across the country have banned pogs, which they blame for inciting fights, theft, student inattentiveness, and generally bad behavior.

In a game of pogs, kids stack a number of the circles and then "slam" them with a heavy plastic or metal piece, the winner keeping any pogs that have flipped over. The craze started a few years ago on Oahu, when an elementary school teacher showed her students a Depression-era game played with milk bottle caps. The current incarnation of the game gets its name from the lids of a local juice drink called POG, which stands for passion fruit-orange-guava juice. The game of pogs migrated from Hawaii to the West Coast and then headed eastward. Along the way, a California businessman bought the POG trademark and various companies started making intricately designed pogs bearing images of celebrities.

The POG phenomenon is an unpredictable mix of ground up and top-down forces, of accident and design, impossible to predict and, according to most industry observers, already in decline. Teachers can breathe easy—until the next fad shows up on the playground.

The use of "blunt" cigars, particularly the brand Phillies Blunts, is an example of pop culture appropriation. A few years ago—like many pop phenomena, the origins are hazy—teenage boys started buying blunts—cheap, medium thickness cigars—cutting them open, hollowing them out, and replacing most of the tobacco with marijuana (girls apparently enjoy Tiparillos). After the rap groups Cypress Hill and Beastie Boys started sporting Phillies Blunts T-shirts and hats in concert, wearing Phillies Blunts paraphernalia became something of a fashion statement as well.

The makers of Phillies Blunts, Hav-A-Tampa Inc., have seen sales jump, an increase largely attributed to the unintended and unauthorized use of the product. Some tobacco stores have stopped selling the brand because of its new connotations, but the trend continues. It will no doubt pass out of favor at some point, only to be replaced by another equally unforeseeable object.

As with all market-based exchanges, knowledge, value, and power in popular culture are dispersed. And reining in popular culture—or, more precisely, the meaning of a particular piece of pop culture—is like trying to nail Jell-O to the wall. It's messy, difficult, and doesn't make a whole lot of sense. Regulators and paternalists are in the difficult position of stanching the dynamic flow of culture. They can outlaw "gratuitous" violence in movies, censor inflammatory lyrics in rock and rap, plant a V-chip in every television in the country. But they will still be frustrated in their attempts to keep pop culture—and its creators—in line. In that sense, they are like Canute attempting to hold back the waves, Gatsby striving to relive the past, or perhaps more appropriately, the castaways forever trying to get off *Gilligan's Island*: It just can't be done. ®

Nick Gillespie (ngilles123@aol.com) is a senior editor of REASON.

Tobacco Row

By Michael McMenamin

A "don't ask, don't tell" policy for journalists

IN THE PAST FEW MONTHS, WHO has done the most harm to First Amendment freedoms? This is a sophisticated test, so pay attention. Was it:

(a) the tobacco industry

(b) Energy Secretary Hazel O'Leary

(c) U.S. District Court Judge John Feikens

(d) CBS's *60 Minutes*

(e) all of the above

No, it's not (e). That kind of guess may fly on the SAT but not here.

The tobacco industry? Not really, unless you believe the First Amendment, properly applied, means no one has a protectable interest in their reputation. The tobacco industry obviously spends more in legal fees each year than their reputation is worth, but, small thing that it is, they treasure it and they are welcome to it.

Hazel O'Leary? Get serious. A run-of-the-mill Clinton appointee who has so far managed to avoid having her own special prosecutor, she is notable only for the frequent trips she takes out of Washington at taxpayer expense, including a number of foreign junkets. What normal American can blame her for wanting to get out of town? While it's true she spent $45,000 of your money to compile what some call a Nixon-like "enemies list" of unfriendly reporters, that kind of money is barely a blink of the eye in Washington. Admit it, were you really shocked to learn that a public official kept lists of friendly and hostile reporters?

Judge John Feikens is the wrong answer also, but picking him shows your sophistication in this area and, accordingly, you get extra credit if you knew he is the judge who issued the patently unconstitutional prior restraint against *Business Week* and its story on Procter & Gamble's lawsuit against Bankers Trust. Indeed, but for the crew at *60 Minutes*, Feikens would have been the correct answer. A Nixon appointee who barred *Business Week* from publishing a story with documents legally obtained by its journalists, he never once cited the landmark Pentagon Papers case in his decision, thus enshrining forever the principle that avoiding embarrassment to a leading financial institution will trump the First Amendment where national security will not.

SO, THAT LEAVES ONLY ONE CHOICE: *60 Minutes*, the oldest and most respected investigative journalism broadcast. Still, it's possible to blame Feikens's ruling for *60 Minutes* being the correct answer. That's because New York media types and their lawyers were talking about little else in early November. Feikens threw out a heretofore inviolate rule: no prior restraints on publication. Period. Hence, it fell to *60 Minutes*'s legendary Mike Wallace to come to the rescue of the First Amendment as the *Business Week* lawyers and as his own CBS lawyers had not. Unfortunately, instead of protecting freedom of the press, the heedless, hubris-ridden Wallace has done it great harm.

A brief history: *60 Minutes* prepared a story on the tobacco industry. One of their confidential sources was a former Brown & Williamson Corp. vice president, Jeffrey Wigand. In the story, which never aired, Wigand accused his former employer of using an additive in pipe tobacco that causes cancer in laboratory animals and of dropping plans to develop a new, safer cigarette. Wigand was, as you might expect, a disgruntled former employee. He had been fired by Brown & Williamson in 1993, and pursuant to a post-employment settlement agreement that restored his severance package and health care benefits, he agreed to what his lawyer terms "a Draconian confidentiality agreement."

When that agreement was reviewed by CBS lawyers, they recommended against airing the Wigand portion of the story because they believed Wigand would be violating his confidentiality agreement, and CBS might be sued by Brown & Williamson for interfering with its agreement with Wigand and inducing him to breach it. CBS executives, including CBS news president Eric Ober, followed their lawyers' advice.

So far, so good. As a libel lawyer who has advised both print and broadcast media prior to publication, I can assure you this was no big deal. It happens all the time. Sometimes the client takes your advice. Sometimes it doesn't. What happened next, however, will have a lasting and chilling effect on journalism and the First Amendment, especially business journalism.

Don Hewitt, executive producer of *60 Minutes,* and Mike Wallace, principal correspondent on the tobacco story, went public with their complaints about the

CHIP BOK

CBS decision, including the fact that it was based on lawyers' advice. They did so after apparently not prevailing in internal corporate discussions.

Hewitt was grudgingly accepting of the decision. "That doesn't make me proud, but it's not my money. I don't have $15 billion. That's Larry Tisch," he said, referring to CBS's chairman and largest shareholder.

Prior to the *60 Minutes* affair, it wouldn't have occurred to most journalists to ask a whistle blower if he had an employment contract that prohibited him from blowing the whistle. Now, it's on everyone's mind.

MIKE WALLACE, BY CONTRAST, WAS OFF the wall. "It's the first time that we really feel...let down by my company." The sky was falling, and the First Amendment was in jeopardy because CBS had dared to follow the admittedly cautious advice of its cowardly lawyers. "It became so obvious...we were simply dead wrong, that we were caving in." A media frenzy ensued, as only the media can do it. *Nightline* devoted an entire show to the subject. So did Charlie Rose. Likewise CNN's *Reliable Sources.* A critical *New York Times* editorial followed. Journalists learned a new phrase, "tortious interference with a contract." Most admitted they had no idea what it meant, but agreed that CBS had been cowardly in caving to the tobacco industry.

Wallace, however, was less than forthcoming in his description of the facts. As *The Wall Street Journal* subsequently revealed, Wallace had not disclosed that: 1) CBS promised Wigand that the interview would not be aired without his permission; 2) he had previously been paid $12,000 as a consultant for help on an earlier *60 Minutes* report; 3) CBS had agreed

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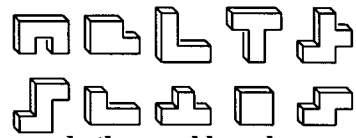

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to indemnify him against any libel action resulting from the broadcast; and 4) CBS had refused Wigand's request to indemnify him against any legal action against him based upon his breach of contract with Brown & Williamson.

Wallace not only failed to reveal this additional information publicly, he also kept it from his colleague, Morley Safer, whom he induced to appear on *The Charlie Rose Show* in defense of the First Amendment. The hapless Safer asserted on the show that the source "wasn't paid, he wasn't threatened, he wasn't promised anything other than an opportunity...to exercise his First Amendment rights" on *60 Minutes*. When Safer later found out all the facts, he apologized to Charlie Rose and his audience and publicly criticized Mike Wallace for having "sandbagged" him by deliberately suppressing the facts, leaving him "twisting slowly in the wind."

Wait. It gets worse. Someone at *60 Minutes* then leaked to the New York *Daily News* the script of the unaired show, including the segment of the interview with Jeffrey Wigand, whom the *Daily News* identified for the first time, as the confidential source. The next day, CBS agreed to what they had previously refused to do: indemnify Wigand against a legal action by his former employer for breach of contract. Good thing for Wigand, because the day after that Brown & Williamson filed a breach of contract, theft, and fraud complaint against Wigand in state court in Kentucky. The judge in the suit promptly issued a temporary restraining order prohibiting Wigand from revealing any further information about his employer, as Wigand was scheduled to give a deposition November 29 in a Mississippi case against tobacco manufacturers. The Mississippi court ordered him to testify anyway.

Lost in all the furor was the one thing that interested journalists and their lawyers in the first place about the dispute: Could companies shut off their employees' access to journalists through invoking a standard confidentiality clause in employment agreements? When this was the only question—before all the details came out—the CBS lawyers looked timid. The theory was untested in court, and a company's rights in this regard had never been balanced against the First Amendment rights of the press. But, coming as it did on the heels of Judge Feikens's prior restraint against *Business Week*, journalists and their lawyers were understandably concerned.

If it were me, and there were a good behavior clause in Mike Wallace's contract, I'd offer him the option of resigning or paying CBS's legal fees defending the source he helped burn.

But for Mike Wallace's massive ego and poor judgment, they shouldn't have been that worried. Not every intentional interference with a contract is improper or illegal. In determining whether interference is improper, a court would consider, among other things, the nature and motive of the journalist's conduct; the interests of the other party to the contract with which the journalist's conduct interfered; and the interest sought to be advanced by the journalist, as well as the interest of society in promoting and protecting the freedom of the press as weighed against the contractual interests of the company.

Moreover, there's a special defense to a wrongful interference action based on giving the source honest advice within the scope of a request for the advice. So, for example, if the source asks whether his conduct will violate an agreement he has with his employer, lawyers for the news organization can offer their "honest advice" to the contrary—if that indeed is the case.

But the better advice to a news organization is not to get involved in counseling a source on his legal obligations. Indeed, the best defense a news organization can have against a tortious interference with contract claim is ignorance: We didn't know our source was bound by a confidentiality agreement. If you don't know it exists, you can't induce a breach.

All of this leads to the best advice to give journalists newly educated to the perils of tortious interference with a contract: "Don't ask, don't tell."

Don't ask your sources whether they're under any contractual prohibitions. Prior to the *60 Minutes* affair, it wouldn't have occurred to most journalists or their lawyers to ask a whistle blower if he had an employment contract or other agreement that prohibited him from blowing the whistle. It simply wasn't on their radar screens. Now, thanks to the irresponsibility of the *60 Minutes* journalists, it's on everyone's mind, including companies who want to keep their employees from talking to the press.

"Don't tell" means that if your lawyers tell your superiors not to run a story for a particular reason, don't whine to the world about what the lawyers did. Don't emulate irresponsible journalists such as Mike Wallace and Don Hewitt by taking an internal dispute public when it doesn't go your way. By violating "don't tell," all Mike Wallace has done is validate that his ego is more important to him than the First Amendment.

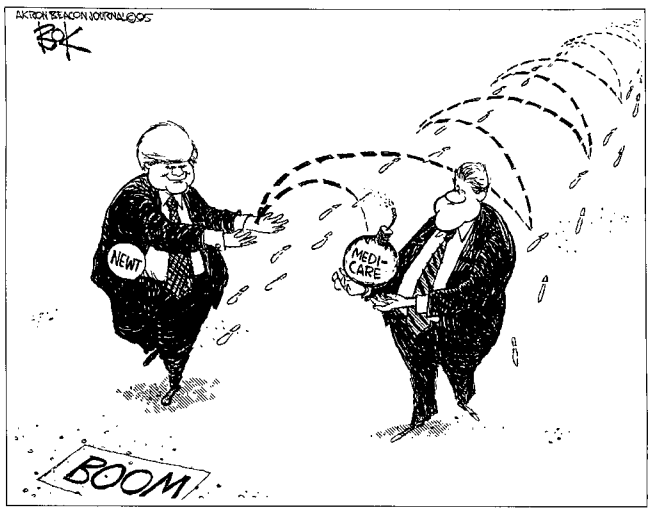
What he set in motion, with all the resulting publicity, will in fact have a chilling effect on a free press because more companies will now try to duplicate what Brown & Williamson did. They won't be successful most of the time, but Mike Wallace sure as hell has made the job of media lawyers a lot tougher. It's a sign of how important *60 Minutes* is to CBS financially that nothing has apparently been done by CBS to Wallace because of his conduct. If it were me, and there were a good behavior clause in Wallace's contract, I'd offer him the option of resigning or paying CBS's legal fees defending the source he helped burn. ®

Contributing Editor Michael McMenamin (WalterHav@aol.com) is a lawyer in Cleveland.

Child's Play

By Carolyn Lochhead

The budget debate is deceiving Americans about the fiscal future.



CHIP BOK

IN THE CLASH BETWEEN CONgress and President Clinton over balancing the budget, all the crucial policy details and factual depth have been swept away by two "talking points" that each side is desperately trying to drill into the public consciousness: Republicans say they will save America's children, while Clinton claims that he will save America's values.

Neither plan does anything of the sort.

Even if the two sides agree on an honest seven-year plan before the 1996 election, it will represent at best only a modest step toward forestalling a problem that will leave American children and American values alike wrecked on the shoals of today's potent elderly voting bloc.

For all the hand-wringing, even the GOP plan leaves the country hurtling off a fiscal cliff around 2010—just eight years after the budget would supposedly be balanced. That's when the 76 million–strong baby boom generation begins to retire and sign up for benefits in the big entitlement programs that now drive the federal budget: Social Security, Medicare, Medicaid, and civil service and military retirement.

"Hitting a zero deficit in 2002 doesn't mean that beyond 2002 the deficit will be zero," says Laurence Kotlikoff, a Boston University economist. "The pain required to keep the deficit at zero is much, much bigger than anybody is talking about publicly."

But if Republicans are guilty of falsely painting their effort as salvation, they at least have taken the first vital step in the right direction. Playing by the conservative Congressional Budget Office rules that Clinton once advocated, they have proposed many very real and very significant changes in entitlement programs, including ending the entitlement to cash welfare benefits and block-granting Medicaid to the states.

They have walked through the political fire on Medicare, proposing to open the system to competition, introduce medical savings accounts, and most significant of all, cap its out-of-control spending growth. Following advice long urged by economists and long ago adopted by the private sector, the GOP plan "defines," or limits, the per-beneficiary payment, cutting off the blank-check approach for at least part of the vast Medicare program.

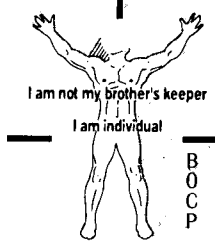
DEMOCRATS, LED BY PRESIDENT CLINton, have for their part stooped to a level of pandering that should make an honest person blush. Upon taking office, Clinton recognized that containing government health care spending was absolutely crucial to braking the deficit. Of course, Clinton proposed to put out the fire by dumping gasoline on it, calling for a government takeover of the private health care market and clamping down with price controls. But even Clinton proposed restraining Medicare spending, arguing cogently at the time that a slowdown of spending growth could not logically be construed as a cut.

Now, he accuses Republicans of planning "crippling cuts" in Medicare and Medicaid that are "bad for America." This can most kindly be described as a gross distortion. Per-beneficiary spending in both programs will continue to soar, which is exactly why the Republican plan falls so short of a fiscal rescue.

The administration has filled the air with glib half-truths and sound-bite discourse calculated to leave a false impression. It panders to the worst impulses of a public that often appears as ill-informed and prone to mood swings as a 13-year-old. (One CNN talk show flashed a "poll" during the partial government shutdown asking people to list themselves as "angry" or "not angry," as if their emotions were substitute for thought.)

PEOPLE CRAVE THE ABSTRACTION OF A balanced budget, but not its specifics. Even the well-informed have a hard time discerning the difference between Medicare (for the elderly) and Medicaid (for the poor), and wouldn't know what a block grant was unless one landed in their personal checking account. Most people seem to believe that budget deficits are driven by military spending, fraud and waste, and foreign aid, rather than the autopilot benefit checks going out to half the population.

If told the facts, however, voters seem quite capable of making rational decisions. Citizens—conservative and liberal alike—who participate in budget-balancing sessions run by the bipartisan Committee for a Responsible Federal Budget



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consistently produce a balanced budget in five years, two years faster than the Republican plan. They have no trouble cutting spending when they find out that interest on the debt—$257 billion—will this year surpass the entire defense budget.

ONE OFTEN HEARS THE ELDERLY CLAIM that they "paid" for their Medicare benefits. Yet every one-earner couple who retires this year will receive a windfall of nearly $260,000 over their lifetime—

When the baby boom generation retires, younger workers will have to pay 84 percent of their income to support federal spending, an obviously uncollectable amount. Even if the Republican balanced budget is enacted, that rate will fall only to the low 70s.

more than a quarter of a million dollars—in Social Security and Medicare benefits above what they contributed in taxes for those programs, according to Eugene Steuerle of the Urban Institute.

Entitlement spending for the elderly and interest on the debt are rapidly crowding out everything else that politicians of all stripes say they want to protect: welfare, defense, crime fighting, education, scientific research, environmental protection, national parks, highways, courts, and every other federal function.

Crushing tax burdens are just over the horizon. When the baby boom generation retires, younger workers will have to pay 84 percent of their income to support federal spending, an obviously uncollectable amount. Even if the Republican balanced budget is enacted, that rate will fall only to the low 70s.

That tax level is untenable. So benefits will be slashed one way or the other, a big surprise for those counting on almost free medical care and a Social Security check to sustain them in retirement.

"It is hard to believe that responsible adults would leave this kind of mess for their children," Kotlikoff says. "People have to sit up and look at this tidal wave of baby boomers coming at us."

Which is why the current White House pandering is such a gross disservice. It robs the electorate of the facts on which to base rational choices. It is an especially devious argument to the poor and the lower middle class under whose banner it is made. Their entire net worths consist of bankrupt promises of future Social Security and Medicare/Medicaid benefits—worthless checks, in effect. Who will "protect" them when they retire, years after the 1996 election, when the debt is monetized and inflation eviscerates their living standards? Japanese bond buyers, maybe?

CLINTON'S VETO OF THE STOPGAP SPENDING bill on the grounds that it raised Medicare premiums was breathtaking. First he insisted that the elderly should pay a lower share of costs—25 percent rather than 31.5 percent—in a program that is structurally bankrupt and will begin going into the red this year. Democrats who created the program in 1965 set premiums at half of costs, itself a huge taxpayer subsidy. And Clinton himself had earlier proposed increasing premiums; the elderly would pay just $4.80 a month less under his plan by 2002 than Republicans propose.

Such tactics moved even the liberal *Washington Post* to blast Clinton and congressional Democrats for having "shamelessly used the [Medicare] issue, demagogued on it, because they think that's where the votes are and the way to derail the Republican proposals generally....If the Democrats play the Medicare card and win, they will have set back for years, for the worst of political reasons, the very cause of rational government in behalf of which they profess to be behaving. Politically, they will have helped to lock into place the enormous financial pressure that

they themselves are the first to deplore on so many other federal programs."

In his brief televised veto message, Clinton repeated the words "balanced budget" or variations thereof 16 times. "We must balance the budget," Clinton said. "I proposed to Congress a balanced budget, but Congress refused to enact it."

Congress did refuse his budget—unanimously in the Senate, with not even California Democrat Barbara Boxer, related to the Clintons by marriage, in support. But Clinton never proposed any such thing as a balanced budget. His first official 1996 budget had the deficit rising to nearly $400 billion in 2004. In June he issued a 20-page press release that claimed to outline a balanced budget over 10 years. The CBO said it left deficits at $200 billion a year.

Democrats describe as a shop of horrors a Republican budget that will spend $12 trillion over the next seven years—$3 trillion more than over the past seven, including a $2,300 increase for every Medicare beneficiary.

White House Chief of Staff Leon Panetta well knows all these facts. He was a former chairman of the House Budget Committee and the director of the Office of Management and Budget who proposed similar entitlement restraints in the past. "The status quo is not acceptable morally," he said in 1992, "because it means that we will heap a larger and larger burden of debt on our children and their children and grandchildren." Yet now he stomps out of negotiating rooms in professed anger over GOP refusals to "protect" Medicare.

Panetta recently held a special "briefing" for regional reporters on a White House report titled "Impact of the Republican Budget Cuts on Children: A State-by-State Analysis." Such reports, tailored to generate regional news coverage, are frequently "unveiled" as part of a big public relations launch by top Clinton officials who suddenly become lavish in their attention to obscure reporters from the hinterlands.

Panetta declared that the dreaded GOP "cuts" will "expose children in [fill-in-the-blank-state] to hazardous waste," and "deny 236,900 children in California basic and advanced skills." If only the federal government were somehow endowing children with such skills.

The report, statistically specific down to the single-digit child in all 50 states, showed Republicans leaving no tender need unmolested. American children would be "forced to remain in poor and unsafe housing" and "go without basic housing needs"; disabled children would be forced into "institutions"; children will go without immunizations, without food even. The Republicans will "allow sewage to flow into waters where children in [Arizona to Wyoming, alphabetically] live and play" and "jeopardize the water that children in [fill-in-blank-state] drink," and expose children to "drugs and drug-related crimes," as if federal programs are protecting them now.

Even the weather, and its "impact" on children, made the list of GOP atrocities. Dastardly Republicans would deny "about 658 children in Nebraska protection from bad weather." Children in sunny, warm places are not immune. The GOP budget also "denies about 595 children in Florida protection from bad weather conditions." The vital aid referred to is the Low-Income Energy Assistance Program, created under the Carter administration in response to the government-induced energy "crisis." It now subsidizes air conditioning bills in the South. Panetta himself had once proposed slashing this relic.

But that was before his boss was running for reelection. Some day not too far away, those same children will wake up to an 84 percent tax rate, truly eviscerated "programs," including no money for courts and prisons and highways and defense and national parks, or a raging inflation that decimates their living standards and leaves their parents destitute. That's the price of Clinton's protection of them and "American values." R

Contributing Editor Carolyn Lochhead is Washington correspondent for the San Francisco Chronicle.

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Private Life

By Eric J. Lyman

How privatization is helping to revive Peru

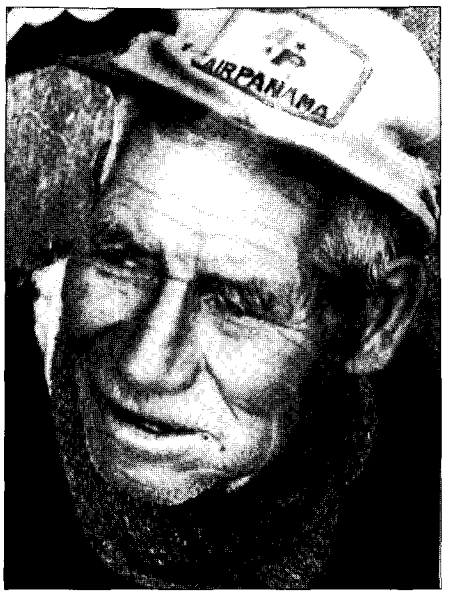
THE WIND IN ATICO, PERU, IS FILLED with the smell of salt and the sound of metal halyards slapping against their boat masts. At the end of the work day, the lagoon is so full of fishing boats that the entire center of town seems to rise and fall with the tides. On the shore, the docks are covered below with barnacles and above with scales and freezers to hold the day's catch.

Fishing is not new to Atico. For millennia, early Peruvians used the small lagoon in the middle of the village as a base for fishing. Near here, anthropologists have found bone fishhooks and remnants of nets made of animal innards that could be more than 2,500 years old. Many families here have included fishermen for longer than can be traced.

"I've got salt water in my veins," said 67-year-old Germán Herrera, a barrel-chested man whose calloused hands learned to throw fishing nets to the sea at age 8. "My father used to say that if our family couldn't fish, we couldn't live."

Unfortunately for Herrera, he was forced to prove his father's axiom wrong in a story repeated too often in Peru. Twenty-five years ago, Herrera's town was a thriving pillar of an industry that nationally provided a fourth of the world's fishmeal. But the lives of the fishermen and the town were permanently altered when private companies in Atico—like their counterparts elsewhere in the country—were nationalized during the military government of the early 1970s and placed under a state bureaucracy called PescaPerú.

Within 10 years, Peru's fishmeal production was reduced to a fifth of its former highs, while PescaPerú had grown from nothing to the recipient of subsidies worth nearly 1 percent of the budget of the increasingly impoverished nation. The fishing industry was ruined in the process. In Atico, as in more than two dozen Peruvian towns where the sea had provided more than three jobs in four, boats literally rotted in the harbors and former fishermen abandoned their homes and fled to Lima's growing slums, desperate for work.



Germán Herrera: Peru's privatization allowed this fisherman to return to the sea.

Herrera was able to keep his home, thanks only to money he had put away in hopes of buying a bigger boat. But he had to take work as a house painter and on government crews building roads a couple of hours away in the mountains. His fishing, he recalls sadly, was limited to about five days a month.

But two years ago, says Herrera, life started returning to this small town 350 miles southeast of Lima. Two of his three brothers who had been forced to leave half a generation earlier returned. At first there were a few new jobs, then a few more. Herrara is again earning enough to live from fishing, and the town is about as productive as it was 40 years ago, but still less productive than in the heyday just before nationalization.

"The new jobs came when they sold the businesses," the white-haired Herrera says simply. "I don't know anything about politics, but I know about jobs. There were no good jobs before and now there are plenty. For that, I give my thanks."

THE MAIN OFFICES OF COPRI, THE COMMITtee charged with privatizing some 240 state-run companies, are in a small, rectangular building that literally spends most of the day in the dark shadow of the massive headquarters of the Ministry of Energy and Mines in Lima. As center stage in an aggressive privatization program initiated under President Alberto Fujimori's administration, Copri is an increasingly busy place.

Copri planned the sale of the public companies that ran Atico's fishing industry. Because of the poor condition of the industry in Atico, Copri reports that selling the rights to the area to an international consortium brought the government a modest return, about $650,000. But most agree with Herrera that the most important result was the creation of more than 150 new jobs, breathing life into the crippled town.

The building that houses Copri once served as the Ministry of Energy and Mines's bank, but the privatizations have allowed it to consolidate in the main structure. "It's kind of funny, but this building used to be for handing out money every payday," says Copri operations director Manuel Llosa, who supervises the day-to-day activities of the staff of about 40. "Now, it's used for bringing money in."

Copri has brought plenty of money in. Since its founding in 1992, the committee has sold more than 75 companies for nearly $4 billion, including the national telephone company, a passenger airline service, two major banks, eight hotel

SANDRA ECHEGARAY S.

chains, and factories producing everything from cement and bricks to tomato paste and breakfast cereal. But the most encouraging and long-lasting part of the equation, according to many observers, is what has happened to the companies since being sold.

"Almost without exception, privatization in Peru has meant higher production, more efficiency, and better income for the employees," said Lima political scientist Gerard Máton. "It's amazing what happens when people are forced to look at the bottom line."

THE NOTED ITALIAN PHILOSOPHER AND naturalist Antonio Raymondi wrote that Peru was like "a beggar sitting on a bench made of gold." Peru's poverty often overshadows the fact that the country is hugely blessed with natural resources.

Even now, with its unlikely mix of state companies and fledgling private firms, Peru ranks among the world's top eight producers of six major metals, including silver and gold. The fishing industry is again among the top six in the world and rising, and Peruvian farms lead or are second in South America in the production of five fruits or vegetables. The piecemeal privatization of the state oil company PetroPerú has so far attracted nine buyers from seven countries, including the United States, Russia, and Taiwan. Peru's expansive portion of the Amazon jungle has unknown potential for exploration, and the national tourist trade, which many experts refer to as virtually unlimited, is just starting to take off.

Yet the country remains among the poorest in the world. Nationalization was part of the problem: In 1960 Peru was second in Latin America in per capita income from agriculture, but with the nationalizations in place 30 years later, it was second to last, ahead of only Haiti. Even now, despite half a decade of reforms and improvements, per capita income is pegged at $2,800 a year, according to only the most generous estimates. That's a figure that Fujimori is intent on changing.

When he became president in 1990, Fujimori announced a three-part plan to attract the foreign capital necessary to raise the national standard of living. The first part was to stem the country's hyperinflation, in which prices were 20,000 times higher in 1993 than five years earlier. He's succeeded with an economic shock program that drastically cut public expenditures, immediately eliminated many state subsidies, and froze the printing of money. As a result, the inflation rate that reached a high of nearly 8,000 percent in 1992 has slowed to about 10.5 percent in 1995.

Part two was to eliminate the terrorist threat that had plagued the country since 1980. Fujimori's nearly done that too, as Shining Path leader Abimael Guzmán was captured in 1992 and violence—especially near the capital—has shrunk to a fraction of its former levels.

The third—and least publicized—part is the privatization process. The process was developed in large part by economist Javier Silva, who ironically produced the plan in 1989 for the presidential campaign of Fujimori's rival, novelist Mario Vargas Llosa. But Fujimori knew a good thing when he saw it, and the plan Silva developed, which called for privatizations in strict stages, was adopted as his own. The privatizations are scheduled over an eight-year period ending in 1999, theoretically ensuring that no industry is hit too hard by change.

The actual process is straightforward. As the date for a sale approaches, a team from Copri aided by the World Bank or another objective organization studies the company and produces what is called a "fair value assessment." From there, a minimum price is set, potential buyers are screened, and a sealed-envelope auction is held.

Companies and consortia representing more than 20 foreign countries—plus many domestic groups—have won rights to parts of Peru's former state-run industries. The pattern for success in most instances involves scaled-back administration expenses and aggressive marketing, often overseas. Nine in 10 of the new owners turn a profit within two years.

The plan offers both technical and social benefits. The money from the sale is used to reduce the state's fiscal deficit, and from then on the companies provide tax revenues instead of draining state coffers. But the plan also calls for between 10 percent and 50 percent of each privatized company to be placed in the hands of the workers over a period of years in a form of profit sharing.

Fujimori, of course, is no libertarian. In 1992, he suspended the Congress and ruled by decree for nearly a year, and he is still known for strong-handed tactics and civil liberties abuses. But many see the privatization process as a libertarian reform experiment in real life.

"It used to be that during the 1970s, I spent a lot of time explaining classical liberal theory to my students from dusty old textbooks," said Matón, a part-time professor at Lima's University of the Pacific. "Now, I can just say 'open today's [newspaper].' It's a rare chance to see a pure theory in practice."

In places like Atico, that practice is brought to life. No political scientist is necessary to see the change in the attitude of the town. "My wife, she used to call me 'viejo' [old man]," the dark-skinned Germán Herrera says with a smile. "Now, it's just plain Germán....I'm not any younger, but I'm doing what I love, and that's what makes me feel like I'm a whole generation younger."

Herrera pulls two of the best fish from the day's catch and wraps them in newspaper—"The family feast," he says—and then puts the heavy vine baskets on the scales. With the catch weighed, he goes to collect bids from the handful of buyers he trusts and settles on a price. The sun is going down as he excuses himself about halfway through the walk home, saying he wants to jog the rest of the way to work the stiffness from his knees.

"I'm talking about it but I don't complain about the sore muscles, because it's a soreness from a good day's work, and that's all an honest man needs," he says. "I'm fishing again. I'm a happy man." ®

Eric J. Lyman (EJLyman@aol.com) is a freelance writer based in Lima, Peru.

Young & Arrestless

By T. Markus Funk

The case against expunging juvenile arrest records

DANIEL DOE (A PSEUDONYM) is a violent man who, like most violent men, was also a violent teen. At age 12, police arrested him for vandalizing a neighbor's house—he had destroyed the furniture, spray-painted the walls, and drowned a caged pet bird in the bathtub. Two years later, he was burglarizing an apartment when the elderly occupant returned home and confronted him. In the scuffle that ensued, the old man broke his hip. When the man died from pneumonia several days later, Daniel was charged with and convicted of involuntary manslaughter.

Daniel's first "adult" arrest came at age 19, when he broke into an occupied home and severely beat the 45-year-old woman who lived there. By the time he was sentenced for that attack, however, his juvenile record, pursuant to Ohio law, had been "expunged"—destroyed. For the second time, Daniel was a first-time offender. Hence, a Cleveland judge, ignorant of Daniel's violent, extensive, felonious past, sentenced him to probation. Two months later, Daniel burglarized yet another house, this time beating the 81-year-old man who lived there to death.

Had the judge known of Daniel's violent criminal past and his demonstrated lack of any rehabilitative potential, there's little doubt that Daniel would have gone to the penitentiary before he had the opportunity to kill the old man.

But the judge didn't know because the law said that he *shouldn't* know.

Most states have statutory provisions that allow—or even mandate—the expungement of juvenile records once the juvenile turns a certain age. Sometimes the records are actually destroyed; sometimes they are merely "sealed." The practical effect of such legislation is to allow a minor who has committed criminal or, in the lingo of the juvenile courts, *delinquent* acts to permanently erase his or her record, usually at age 17 or 18. The stated goal of this policy is to allow the juvenile offender to enter adulthood with a proverbial clean slate, thereby shielding him (or, less likely, her) from the negative effects of having a criminal record.

Supporters say expungement is an enlightened practice that merely forgives youthful transgressions. But expungement is actually an astonishingly counterproductive policy that benefits only young criminals. The practice prevents society from acting on the simple fact that those who have committed crimes in the past are likely to commit crimes in the future and hence should be treated differently from true first-time offenders.

By making it virtually impossible to collect meaningful data about juvenile delinquents, expungement also makes it difficult to evaluate crime-prevention and rehabilitation programs. Outside of the criminal justice sphere, the policy has other deleterious effects. Employers, for instance, can't know whether potential employees are prone to stealing or other criminal behaviors. Given these various costs, it's not surprising that a number of states are seriously reevaluating the sealing of juvenile records.

EXPUNGEMENT LAWS HEARken back to a simpler past. The practice "was designed to deal with delinquents who stole hubcaps, not those who mug old ladies," notes sociologist Rita Kramer in *At a Tender Age: Violent Youth and Juvenile Justice* (1988). Gargantuan increases in violent juvenile crime underscore the point. Today's juvenile offenders are generally distinguishable from their adult criminal counterparts only by their age—an arbitrary factor indeed. Juveniles are the fastest growing segment among violent offenders. Between 1983 and 1992, according to FBI estimates, violent crime committed by juveniles increased 57 percent. Murders and non-negligent manslaughter rates jumped 128 percent, aggravated assault 95 percent, and rape 25 percent. And cohort studies discussed in Neil A. Weiner and Marvin E. Wolfgang's *Violent Crime, Violent Criminals* (1989) show that juveniles account for up to 35 percent of all male police contacts.

The philosophy underlying expungement legislation can be traced to what is known as the Chicago School of Criminology, which, during the 1920s and '30s, championed environmental explanations of criminality. The Chicago School (the term refers to a broad-based intellectual movement that started at the University of Chicago) rejected traditional criminological theories that focused on issues of indi-

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vidual morality and volition and concentrated instead on factors external to the individual. This new model viewed America as a "criminogenic" society in which ghettos and slums taught the people who lived there how to become criminal by giving them deviant cultural values.

This environmental model reached its high-water mark in the early 1960s with Robert K. Merton's "Strain Theory," which posited that America's supposed obsession with ambition and economic success led to crime and deviance. Strain theory viewed delinquency as arising from the frustration felt by individuals who were unable to achieve culturally defined goals because they were denied the institutionalized means of doing so.

In the 1960s—the decade during which most expungement statutes currently in force were written—expungement advocates espoused what is known as the "labeling" or "social reaction" model. The labeling perspective is based on the premise that the very act of labeling those who are apprehended as "different" creates deviants who are different only because they have been "tagged" with the deviant label.

As criminologist Frank Tannenbaum, a prominent labeling-perspective theorist, argued in his 1983 book *Crime and the Community*, "The process of making the criminal...is a process of tagging, defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious; it becomes a way of stimulating, suggesting, emphasizing, and evoking the very traits that are complained of." Hence, the only way to rehabilitate juvenile delinquents is to send them into adulthood with this label detached.

ASIDE FROM ANY PHILOSOPHICAL AND common-sense disagreements one may have with the labeling theorists, the major question regarding expungement is whether juvenile delinquents are "normal" kids who simply make youthful mistakes that are unlikely to be repeated in adulthood.

The answer is no. Delinquents are substantially different from non-delinquents. Research suggests that delinquents are more defiant, ambivalent about authority, emotionally unstable, extroverted, fearful of failure, resentful, hostile, suspicious, and defensive than non-delinquents. In their book *From Boy to Man, From Delinquency to Crime* (1987), University of Pennsylvania criminologist Marvin E. Wolfgang and his co-authors found that there is an extremely strong correlation between juvenile delinquency and adult crime, and that juvenile delinquency is the "best predictor of adult criminality." John Monahan, in his 1981 book *Predicting Violent Behavior*, has found that individuals with juvenile records are four times more likely to become adult offenders.

Research suggests that delinquents are more defiant, ambivalent about authority, emotionally unstable, extroverted, fearful of failure, resentful, hostile, suspicious, and defensive than non-delinquents.

Similarly, a study tracing the criminal careers of 1,000 juvenile boys discussed in Sheldon and Eleanor Glueck's *Of Delinquency and Crime* (1974) found that 73.2 percent of those who could be located had been officially cataloged as repeat offenders within 10 years of their first appearance in juvenile court. An extensive FBI study discussed by Florida State University criminologist Gary Kleck, in *Point Blank* (1991), estimates that 74.7 percent of all murderers had arrests for violent felonies or burglaries, and murderers averaged four prior major felony arrests over a criminal career of at least six years. Those figures do not even begin to approximate the actual criminal histories of those individuals, since being arrested is itself a highly atypical consequence of violating the law. It is also worth noting that those figures would be even higher if juvenile expungement statutes did not artificially deflate them.

In fact, expungement statutes also make it virtually impossible to collect the kind of data that might lead to more effective crime prevention. In a 1992 article in the *Journal of Urban and Contemporary Law,* Carlton Snow, the former dean of Willamette University College of Law, argued that expungement statutes "impinge on a democratic society's ability to inform itself about all aspects of the criminal justice system....Regardless of whether juvenile records are merely 'sealed' or actually destroyed, the data becomes less available for research purposes." The result: The general public is unable to evaluate the juvenile justice system accurately, and sociologists and criminologists are left less able to study important aspects of criminal behavior.

And, as the case of Daniel Doe illustrates, expungement often prevents the courts from adequately assessing the danger a younger criminal poses to society.

The functions that judges perform at sentencing—one of which is to determine the convict's rehabilitative potential, as evidenced by his response to prior convictions—are simply too important to allow incomplete information concerning the nature and seriousness of an individual's criminal past to interfere with the proper dispensation of punishment.

That's one of the major points in *United States v. Davis*, a 1995 case involving a convicted felon's due process challenge to the United States Sentencing Guidelines' directive to consider juvenile convictions in calculating a defendant's prior criminal history. Writing for the court, Judge William J. Bauer of the Seventh Circuit Court of Appeals powerfully stated: "[I]t is imperative that the defendant's sentence account for his criminal history from the date of birth up to and including the moment of sentencing. The consideration of the defendant's juvenile record is essential, because it is clear that the 'magic age' of eighteen, seventeen, or sixteen, whatever it may be in a specific state, cannot wipe out all previous con-

tacts with the law. The pubescent transgressions...help the sentencing judge to determine whether the defendant has simply taken one wrong turn from the straight and narrow or is a criminal recidivist."

Expungement similarly interferes with effective law enforcement, since police officers are impeded in their efforts to identify patterns of criminal conduct. There is voluminous case law stating that arrest records serve a valuable law-enforcement purpose, that the dissemination of criminal records promotes the public welfare, and that even "unresolved" arrest records provide significant information and aid in the resolution of criminal actions. When the police are investigating criminal activity, for instance, they routinely examine the prior criminal records of potential suspects to see if there is evidence of a modus operandi. Juvenile records are routinely withheld, making the police's job that much more difficult.

Expungement exacts costs beyond crime and punishment. It prevents employers from making fully informed hiring decisions, such as whether applicants are likely to pilfer. Compelling employers to hire individuals without full insight into their criminal propensities is a heavy penalty to force upon businesses. In *Privacy, Secrecy and Reputation*, Seventh Circuit Court of Appeals Judge Richard Posner says that arguments for expungement are "particularly weak in the context of employment, where competition exacts a heavy penalty from any firm that makes irrational employment decisions."

Perhaps more important, expungement forces employers into a very risky position from a workplace liability perspective. Under the common law, an employer has a duty to provide a safe work environment, and this duty has gradually been extended to hiring safe employees, since, in terms of legal analysis, a dangerous employee creates risks comparable to a defective machine. As Carlton Snow has pointed out, "Under the theory of vicarious liability, hiring applicants with expunged juvenile records is potentially hazardous for employers and employees alike." Since an employer can be held liable for an employee's torts while on the job, says Snow, "complete knowledge about an applicant would allow an employer to take appropriate steps to decrease any liability resulting from an employee's subsequent conduct."

THE EXPLOSION IN JUVENILE CRIME AND the growing intellectual disenchantment with expungement statutes are beginning to have an effect: A number of states are rethinking the policy of sealing or destroying juvenile records. This past spring, for instance, Connecticut passed a law that allows delinquency records to be disclosed to police, school officials, social service workers, and "anyone with a legitimate interest in the information." Republican Pennsylvania Gov. Tom Ridge is pushing to make "it harder to expunge juvenile records" and legislation passed last February lets judges review juvenile records before setting bail. Similar initiatives are underway in Louisiana, Texas, and Kentucky, where Democratic Gov. Paul Patton has announced a plan to "lift the secrecy of juvenile court proceedings for convictions of serious felony crimes."

Given that adult criminality is often predicated upon juvenile delinquency, it follows that criminals have the most to gain from any expungement scheme that allows individuals to start with a "clean slate"—or, more appropriately, a *cleaned* slate—upon reaching majority.

At bottom, expungement statutes are attempts to lessen the penalty that public opinion places upon former offenders. But the "stigma" of having been a juvenile delinquent should only be of concern insofar as it *incorrectly* characterizes an individual who has been able to reform his life since his brief brush with the law as a juvenile. If a former delinquent remains engaged in criminal activity, then it is clear that the juvenile justice system has failed in its goal of rehabilitation, and concern for the offender should be replaced with concern for protecting society from a predatory recidivist.

And even if one accepts the notion that those who have committed a juvenile indiscretion will outgrow their reckless behavior, it remains necessary to differentiate between those who in fact can be rehabilitated and those whose rehabilitative potential is negligible—i.e., career criminals.

But current expungement statutes rarely make such a distinction, choosing instead to delete a teenager's criminal record upon reaching majority (or sooner), regardless of whether it consists of a one-time arrest for public urination or numerous convictions for assault, burglary, or rape. While expungement may be appropriate for the one-time child offender (who presumably has been rehabilitated), it is wholly inappropriate for a young chronic criminal who, based on numerous incidents of re-offending, shows no rehabilitative potential. As the number of offenses increases, the underlying delinquency becomes more troublesome, and it is likely that an anti-social pattern will continue throughout a criminal's adult years.

Given that adult criminality is often predicated upon juvenile delinquency, it follows that criminals have the most to gain, and that society the most to lose, from any expungement scheme that allows individuals to start with a "clean slate"—or, more appropriately, a *cleaned* slate—upon reaching majority. That expungement is being challenged both intellectually and politically indicates that the costs may have finally become too much to bear. ®

T. Markus Funk (102442.3055@compuserve.com) is a clerk for a United States District Court judge in St. Louis.

End Games

By John Hood

The End of Racism: Principles for a Multiracial Society, by Dinesh D'Souza, New York: The Free Press, 724 pages, $30.00

Dinesh D'Souza: His intemperate arguments aren't likely to help bring an end to racism.

ACCORDING TO MANY BLACK SCHOLars and activists, I can be a racist but my next-door neighbors cannot. I am white. My neighbors are black. "Black people can't be racist," explained Spike Lee. Harry Allen of the rap group Public Enemy made a similar point when accused of racism against whites and Jews. "It's impossible," he said. "Only white people can be racist, and I am not white."

Should I be angry about this double-standard? Not if I understand that the "blacks can't be racists" thesis is strictly a matter of definition. Many scholars define racism as not simply bigotry against other races but the actual practice of discriminatory treatment against the races you don't like. The commonly stated formula for racism, therefore, is prejudice (which anyone can have against another race), plus power—and most of the power in our society, the argument goes, remains in the hands of whites.

For all practical purposes, of course, racism and prejudice are synonymous, at least in the way most of us use the terms in everyday discourse. Even if I can't call Harry Allen a racist, I can still call him a disgusting bigot. Similarly, Dinesh D'Souza spends a great deal of time in his controversial new book *The End of Racism* constructing an elaborate distinction between ethnocentrism and racism that, in practical terms, is meaningless.

"While racism refers to the hierarchal rankings of human beings based on biological characteristics, tribalism and ethnocentrism are nothing more than an intense preference for one's own group over strangers," D'Souza writes. Ethnocentrism, he argues, has existed in some form in all human societies since the beginning of time. It might be based on skin color or shared heritage, but not necessarily; it could, instead, be based on nationality, religion, shared traditions, or geographic proximity. Racism, however, arose only among Europeans of the Enlightenment as a systematic, even rational, attempt to explain racial differences in terms of genetics. "While racism is necessarily rooted in biology, ethnocentrism is typically rooted in culture," he said.

This is shockingly poor history, for starters. D'Souza attempts to explain away the often-stated, biology-based prejudices of groups as wide-ranging as Chinese, Arabs, Zulus, and Aztecs as merely ethnocentrism based on culture, religion, or language. But Chinese of the Han dynasty period, for example, described darker-skinned Asians to the South as "greatly [resembling] the monkeys from whom they are descended." To D'Souza, this isn't evidence of racism because the Chinese hated everyone except their own kind, including Koreans and Japanese. Arabic prejudice toward both white-skinned Slavs and black-skinned Africans was, according to D'Souza, based on climate rather than heredity. Arab fetuses, according to one 10th-century Islamic writer he quotes, got the right amount of sun and warmth in the womb, yielding an appropriate "pale brown color," while Slavic babies got too little and African babies were "overdone in the womb until they are burned."

D'Souza's argument is weak, to say the least. The Chinese could, of course, have been both racist and ethnocentric—as many Americans, including some Southerners of my acquaintance, have been in modern times—disliking Turks and Burmese for their strange color and hair, and disliking Koreans and Japanese for other reasons. The notion that most medieval Arabs shared a wacky climatological explanation for racial differences is even sillier. From their own experience, they knew that white or black slaves taken to Iraq produced white or black children respectively, not brown ones. To argue that climate originally influenced the biological development of differing skin tones and behaviors among human beings (hardly a controversial position today) is obviously not to argue that the resulting differences are purely cultural.

Interestingly, D'Souza points out that ancient Greek mythology explains the existence of white, brown, and black people with the story of Phaeton, son of the sun god Helios, who took a joyride in his father's fiery chariot and, careening wildly, gave proto-humans in the North too little sun and in the South too much. I suspect that educated Arabs of the 10th century, like educated Greeks in classical times, understood this sort of explanation to be more metaphorical than literal.

Furthermore, to fashion a careful distinction between tribalism on the one hand and racism on the other is to lend far too much credence to today's racial categories. "Asian" and "Hispanic" are impossibly broad categories, as D'Souza surely agrees. If Arabs think Koreans are funny-looking and call them monkeys, surely they are being racists in the way most people use the term. Black tribes in Africa might not have differed much in skin tone, but their stature, facial features, and

LEN BE PAS

other physical characteristics certainly did differ—a biological fact that the tribes often took notice of and to which they attributed behavioral characteristics.

In sum, D'Souza fails to construct a believable contrast between universal ethnocentrism and European racism, and does so in a relatively brief section of a 724-page book that, ultimately, relies on his careful definitions in order to foresee the end of racism. He describes the racist sentiments of Enlightenment thinkers in some detail, and in a strangely optimistic way. "Painful though we may find it to read what people in earlier centuries had to say about others," D'Souza writes, "it remains profoundly consoling to know that racism had a beginning, because then it becomes possible to envision its end."

I DON'T FAULT D'SOUZA FOR SEEKING consolation about racism's origins. Much of *The End of Racism* is troubling and depressing. Crime, poverty, and illegitimacy continue to plague African Americans disproportionately. Faddish multiculturalism is sweeping American academia and public education. Politicians and civil rights leaders are cynically manipulating public debate about these issues and obscuring real solutions.

These familiar themes are presented thoroughly and convincingly by D'Souza, but I don't think *The End of Racism* will become the canonical work on race relations its promoters envision—not only because it is based on poor history but also for the simple reason that D'Souza has chosen the very worst rhetorical style one can imagine for the subject. One word for it might be inelegant. Another is offensive.

His critics, including leading black conservatives Robert Woodson and Glenn Loury, have zeroed in on a number of excerpts (some, to be fair to D'Souza, taken out of context) to identify his insensitivity. I'll add a few more, with context. Discussing high illegitimacy rates among black children, he writes that, "with some discomfort," one can reach the conclusion that there is "some truth to the historical stereotype of the black male stud." Is that the most parsimonious conclusion from the data—or is it that most blacks today aren't getting married before, or at least after, they have kids the way their parents and grandparents did?

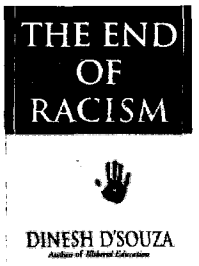
In another passage, he discusses what he calls "the distinctive lingo of Black English," about which he says that "if African American students wish to succeed in American society, they cannot do it with Black English." Then, he makes the claim that "scholars estimate that around 80 percent of African Americans use some form of black dialect," the inference apparently being that most blacks cannot succeed in American society because of their diction and grammar. This is a deeply offensive statement, though I'm sure D'Souza didn't mean it that way. Talking like a hillbilly is also a major impediment to success in the larger American society, but having a Southern accent and speaking in Southern idioms (such as the extremely useful plural second person *y'all*) is hardly the same thing as talking like a hillbilly. Neither can the dialect of most American blacks be equated with the "ghetto idiom" D'Souza criticizes.

And in a chapter on what he calls "rational discrimination," D'Souza explains the seemingly racist behavior of taxi drivers who won't pick up black males, white women who cross the street rather than walk past a black youth, and employers who won't hire blacks for entry-level jobs as understandable decisions by "amateur statisticians acting on impressionistic but not unreasonable generalizations." Of course, to say that blacks commit crimes at relatively higher rates than whites of the same age is not to say that the average black teenager poses a significant threat to a cab driver, sidewalk passerby, or employer.

Nor do studies demonstrating that a quarter or more of young black males have some kind of criminal record prove a violent black disposition, since many of the offenses are for substance abuse and other nonviolent or even victimless crimes, while many of the violent crimes perpetrated by blacks are the work of a core group of recidivists who account for

THE END OF EXCUSES

"With its unsparing exploration of racial group differences, *The End of Racism* runs the risk of becoming this year's Most Dangerous Book."
—*The Wall Street Journal*



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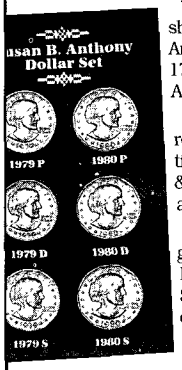

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a disproportionately large share of the offenses. Why let "amateur statisticians" off the hook so lightly, when they really seem to be indulging in old-fashioned, ill-informed prejudice?

MANY OF D'SOUZA'S POINTS ARE BASED on disproportionality, which isn't the same thing as propensity. In arguing that the black middle class owes a large part of its existence to government, D'Souza reports that 24 percent of blacks work for the government, compared with 14 percent for whites. Furthermore, he writes, "state and local agencies which service a poor and predominantly black clientele, such as housing and welfare, employ substantial proportions of African Americans: 38 and 23 percent respectively."

This last point is advanced to prove that employed blacks have a vested interest in the continuation of government bureaucracy and the welfare state in a way that employed whites do not. But D'Souza's own data show that three-fourths of black workers are employed in the private rather than the public sector, and that most welfare bureaucrats are whites. Blacks do need to make more progress in private-sector employment and entrepreneurship, as D'Souza subsequently argues, but why exaggerate the point?

Sensitivity has become unpopular among conservatives today, especially among *agents provocateurs* on college campuses who, like the student activists of the 1960s, delight in challenging orthodoxy and "political correctness." But grace and manners have practical utility. They oil social interactions among human beings that would otherwise be full of scraping pistons and dangerous sparks.

D'Souza greatest failure in *The End of Racism* is that he has chosen a style of argument, even a set of chapter titles (e.g. "Uncle Tom's Dilemma: Pathologies of Black Culture"), that provokes rather than persuades. Call me politically correct, but I don't think there's anything wrong with sensitivity and prudence on matters of race. The issues are so complex, with so many raw nerves and historical grievances involved, that one cannot debate race matters in the same wonkish or clever way one might discuss capital gains taxes or medical savings accounts.

D'Souza has written a comprehensive and often entertaining literature survey about race in America today, but its breadth disguises a lack of depth. He knows who's who on the various sides of scholarly race debates, but exhibits little personal experience with blacks who aren't "pathological" or with honest-to-goodness white racists, who remain depressingly numerous, in my experience.

To say that blacks commit crimes at relatively higher rates than whites of the same age is not to say that the average black teenager poses a significant threat to a cab driver, sidewalk passerby, or employer.

This past October, I attended a four-day seminar on human relations and leadership in which one participant, a talented and personable black dentist from nearby Fayetteville, North Carolina, broke down in tears recounting her academic experiences. She was always expected to perform worse than her white classmates, she said. Many of her black friends didn't understand or support her academic success or her decision to enroll in upper-level courses that were almost all-white. And some of her white co-workers and fellow students didn't take her many accomplishments seriously, attributing them to affirmative action rather than to her own efforts.

To this woman, struggling to deal with a set of complicated and heart-rending emotions, D'Souza has something to say in *The End of Racism*: You probably *are* where you are because of affirmative action. Your accomplishments do not, in fact, deserve to be taken seriously.

He describes a great deal of economic and social progress by blacks over the past three decades as essentially the result of quotas in education and employment. "Many middle-class blacks seem to realize very well that the reason they are in the middle or upper-middle class is because they are black," he writes. Few middle-class blacks, therefore, will agree to end racial preferences "when they know that it is race that helps to pay the mortgage." Even though D'Souza has important things to say about race and public policy, my black dentist friend, and others like her, aren't likely to listen because of his tendency to exaggerate and provoke. This is unfortunate, and hardly hastens the end of racism. ®

Contributing Editor John Hood is president of the John Locke Foundation, a nonprofit think tank based in Raleigh. His book The Heroic Enterprise: Business and the Common Good *will be published this summer by The Free Press.*

Losing Argument

By James K. Glassman

The Winner-Take-All Society, by Robert H. Frank and Philip J. Cook, New York: Free Press, 272 pp., $25.00

EXCEPT FOR A SHALLOW RECESSION four years ago, the U.S. economy has been humming along very nicely since Ronald Reagan was elected president. But we have to worry about something, don't we? So lately economists, sociologists, and politicians have been worrying about the disparity between the richest Americans and everyone else.

Since 1978, for example, the top 5 percent of households have increased their share of the national income from 17 percent to 21 percent. In real dollars, the average income of the top 20 percent of Americans has grown by about one-third while the average income of those in the middle 20 percent has been flat.

While no one really knows why this divergence has occurred, many economists think, as Robert H. Frank and Philip J. Cook put it in *The Winner-Take-All Society,* that "the best performers have somehow gotten 'better' relative to their colleagues." This conclusion—to which Frank and Cook, by the way, do not subscribe—is a natural outgrowth of what's called "human capital theory," which is the idea that a person's wages are determined by his own store of income-producing assets, such as education, intelligence, and drive.

Adam Smith described the concept more than 200 years ago in *The Wealth of Nations*: "The contrast between the intelligence, the activity, and, above all, the economy [that is, thrift] of some and the indolence, inaction and dissipation of others, was a fourth principle of inequality and the most powerful of all."

Human capital is analogous to financial capital. "Thus," write Frank and Cook, "a worker with twice as much human capital as another will earn twice the wage, just as someone with $10,000 in the bank will earn twice as much interest as someone with only $5,000."

Economists who adhere to this sensible theory believe that the computer revolution and increased access to information have vastly increased the stock of human capital for some Americans when compared to others who are less brainy, educated, or diligent. This is Labor Secretary Robert Reich's constant refrain, and the solution, he says, is to increase chances for education and training.

But even economists who subscribe to the human capital theory admit that it isn't completely satisfying. Writing in November in *The Washington Post,* my colleague Steven Pearlstein cited Frank Levy, an economist at the Massachusetts Institute of Technology who has been "reviewing all of the wage inequality literature of the past decade." Levy was forced to conclude that "economists can explain only about half of the increase in inequality over the last 20 years." For one thing, incomes in the United States have diverged more than those in Japan and Europe, where the same technological forces are present.

Frank, who teaches economics, ethics, and public policy at Cornell, and Cook, who teaches public policy at Duke, think they can explain the other half of the increase in inequality—and perhaps more than that. The provocative thesis of their book is that it is the nature of more and more job markets to give top performers huge rewards and everyone else crumbs. Thus, Michael Eisner makes $200 million in a single year as CEO of Disney; novelist Danielle Steel gets $12 million per book; boxer Evander Holyfield is paid $28 million for a year of prizefights. Meanwhile, median incomes stagnate, most writers can't even get their books published, and the average boxer is lucky to earn a few hundred dollars a fight.

Frank and Cook admit that "the widening gap between winners and losers is apparently not new," and they quote the British economist Alfred Marshall, writing in 1890: "There never was a time at which moderately good oil paintings sold more cheaply than now, and there never was a time at which first-rate paintings sold so dearly." Markets have always rewarded the best with a premium. "What *is* new," say Frank and Cook, "is that the phenomenon has spread so widely and that so many of the top prizes have become so spectacular."

Most markets, of course, do not reward a single winner, but a select group—a handful of best-selling novelists, pro basketball players, or movie stars. But, in some markets, the phrase "winner-take-all" is close to the literal truth, the gap between the number-one and number-two performer is that wide. "For many years," the authors write, "the face of Mary Lou Retton, the 1984 gold medalist in gymnastics, peered out at millions of Americans each morning from the front of their Wheaties boxes. Her endorsement contracts have earned her several million dollars in the years since her medal. But although Retton's victory over the 1984 silver medalist came by only a slim margin, today almost no one can even remember the runner-up's name."

Why do Frank and Cook think that winner-take-all markets are emerging now, all of a sudden? One reason is technology. But unlike adherents to human capital theory, Frank and Cook have a specific force in mind—the ability to broadcast rather than narrowcast. The best opera singer 100 years ago may have earned the equivalent of $1 million a year. Her income was sharply limited by physical constraints—the number of seats in the theaters she could tour in a single season. Today, however, Michael Jackson can make $50 million a year since he can reach hundreds of millions of fans in just one night by satellite and sell them his mass-produced CDs the next morning.

A second reason for the rise of winner-take-all markets is something the authors call "decision leverage." As corporations have grown larger, write Frank and Cook, "a small difference in the quality of even a single decision can translate into an enormous difference in the value of final output. Consider a chief executive officer who must decide which of two new products will be produced by his Fortune 100 firm....Making the right choice could easily mean several million dollars of added profit."

AT THIS POINT, YOU MAY BE NODDING your head in agreement. What an interesting idea! But before you get carried away—and before we learn the rest of the authors' argument (the economic and social consequences of winner-take-all systems, and the remedies), let's take a breather and ask an important question: What evidence, other than juicy anecdotes about movie stars and athletes, do Frank and Cook provide to back up their thesis?

As far I can see, none. Intuitively, we can understand that, in the glamour professions (entertainment, sports), the top

performers reap huge rewards, almost certainly larger in relative terms than in the past. But those changes may simply be the result of the decline of cartels like the studio system—which kept stars from receiving earnings that properly reflected their store of human capital—or the tyranny and collusion of professional sports-team owners before players' unions.

But what about business? The authors cite statistics that compare the pay of CEOs with that of other workers. They trot out the famous "estimates" (their word) of compensation consultant Graef Crystal, who reports that while the typical head of a large American corporation earned about 35 times the pay of an average manufacturing worker in 1974, today the ratio is about 120–1.

But how much of that change comes from the fact that the corporations they run are larger, or that the productivity of the CEOs themselves has improved at a faster rate than the productivity of manufacturing workers? Does the phenomenon pervade second-tier corporations as well, or is it isolated? And, as with sports and movie stars, how much of the change merely reflects the appropriate play of market forces that were previously suppressed? Frank and Cook concede that "there has been a dramatic increase in the extent to which American firms compete with one another for the services of executive talent." For one thing, they're hiring CEOs from a broader pool, rather than promoting from within, and they're tying their compensation to stock performance, an idea that has been long overdue.

Since they have no definitive data, Frank and Cook take a kitchen-sink approach to their subject. They throw in everything they can get their hands on. For example, here is one of their explanations for how winner-take-all markets arise: "The demand for a front-rank product or service may also stem from a desire to avoid regret over possible adverse outcomes attributable to having bought less than the best." In other words, a producer may hire Robert Redford because, if the picture flops, he'll be able to avoid kicking himself for not hiring Robert Redford. He won't have to say, "Damn! If only I had hired Redford, it might have been a hit." But it seems just as likely that the producer of the flop would be glad he did *not* hire a pricey star: "Whew! It's a good thing I didn't hire *Redford*. I would have lost $40 million on that picture instead of $30 million."

At times, *The Winner-Take-All Society* has the feeling of an exam paper in an introductory economics course, with the students trying to impress the professor with every fact and concept they'd learned during the year. Thus, making cameo appearances are hoary notions like The Prisoner's Dilemma and The Tragedy of the Commons and a gratuitous attack on Reaganomics. There are touch-and-go forays into advertising, the Wall Street practice of estimating earnings, overwork, college athletic budgets, body-piercing, and celebrity journalism. While some of these little essays are entertaining, I wish Frank and Cook had devoted more space to convincing readers, through the use of actual numbers, that their winner-take-all thesis has some validity. They should have heeded the words of Lord Kelvin, chiseled in stone over the entrance to the Social Science Building at the University of Chicago: "When you cannot measure it, when you cannot express it in numbers, your knowledge is of a meager and unsatisfactory kind."

The authors start with a compelling idea, but end with oppressive social engineering. They've forgotten that an economy that's structured to achieve high levels of individual performance benefits practically everyone.

But let's be charitable and concede that winner-take-all is a sound concept. The next question is: So what? What's wrong with opera star Kathleen Battle making millions while a member of the chorus makes a few thousand? The main concern of the authors—the crux of their argument, really—is that winner-take-all markets misallocate talent and resources. Not only are such markets inequitable, they're wasteful to the economy as a whole.

Frank and Cook believe that huge winner-take-all payoffs attract "too many contestants," luring productive citizens "into socially unproductive, sometimes even destructive, tasks." In other words, seeing Kathleen Battle making so much money, a woman who might study to become a biology teacher instead devotes years to improving her voice—only to find that, as the world's 200th best soprano, she can't make a decent living. By then, it's too late for her to become a biology teacher, and society and the economy lose out.

THE ONLY EVIDENCE THE AUTHORS OFFER as proof of this "overcrowding" thesis is the observable "human frailty" that we can see in lotteries and other forms of gambling, "namely, our tendency to overestimate our chances of winning." (Cook is the author of a book called *Selling Hope: State Lotteries in America*.) But gambling, for most Americans, is harmless entertainment. We take our occupational choices far more seriously. How long does it take to realize that you're not going to become a great soprano or a pro basketball star? How much talent is truly wasted? My guess is, not much—certainly not enough to have an adverse effect on the efficiency of the U.S. economy.

Also, can't the lure of a huge payoff have a *good* effect? As more contestants enter the race for stardom, competition increases, and those who emerge as best are better than they would have been in a less-crowded field.

The authors argue that non-winners are essentially losers. They get nothing, or next to nothing, or, at best, they get less than they would have gotten if they had gone into other careers. Again, society is said to lose. But is this true? A chief operating officer or chief financial officer who loses the race for CEO is still well-paid—

and, more important, the lure of the CEO's job (and compensation) continues to inspire those lower-level executives to try harder. In fact, there's a good case to be made that, even if a $10 million salary is an overpayment to the CEO (he would be just as satisfied with, say, $5 million), it is a spur to dozens of executives lower on the ladder, who otherwise wouldn't work so hard. Thus, in the end, it is economically beneficial.

Now, let's make two concessions: that winner-take-all markets explain inequality and that such markets misallocate talent and resources. The solution Frank and Cook offer is no surprise. They want to take away a chunk of the winners' prizes through more steeply progressive taxes.

They also advocate what they call "positional arms control agreements"—contracts to curb what they see as wasteful competition for winners' prizes. One of their ideas is a national policy to "encourage people to work fewer hours." For example, "the number of official national holidays could be increased." (It's hard to see winners taking those days off. Would the authors jail them if they didn't?) "If people worked a little less," write Frank and Cook, "they would have to be paid a little less as well. But if *everyone* were paid less, then people would also need less to meet their obligations."

But positional arms control agreements also deter peak performance. Imagine such an agreement in a professional golf match. Four top golfers are asked to play a round in which a single winner can earn $400,000 and three losers nothing at all (like the TV *Skins Game*). Now imagine that the four golfers make a secret pact before the match to split the total prize money four ways, with each receiving $100,000, no matter how the actual competition turns out. Would such an agreement lead to a better performance, or a worse one? The answer, it seems, is obvious.

Having started with a compelling idea, Frank and Cook end, inevitably, with social engineering that's both oppressive and trivial. What they've forgotten is that an economy that's structured (or, better yet, unstructured) to achieve high levels of individual performance benefits practically everyone. For one thing, winner-take-all systems (or plain old unfettered capitalism) bring us, at low cost, the aesthetic pleasure of watching Mary Lou Retton and listening to Kathleen Battle. That's a pretty good payoff. ®

James K. Glassman writes a column for The Washington Post *and hosts* Capital Gang Sunday *on CNN and* TechnoPolitics *on PBS.*

Who Ordered That?

By Steven Postrel

At Home in the Universe: The Search for the Laws of Self-Organization and Complexity, by Stuart Kauffman, New York: Oxford University Press, 321 pages, $25.00

BACK IN THE NINTH GRADE, I WAS subjected to that bogeyman of all liberal intellectuals, a creationist biology teacher. For the most part, he followed the standard curriculum (which even in the mid-1970s was heavy on ecology and "environmental" science), but when it came time to discuss evolution, his heterodoxy appeared. It was mostly standard stuff—nothing likely to faze a free-thinking 14-year-old. There was one point, however, where my teacher, a gentle man truly concerned about our immortal souls, hit on an argument I found disturbing.

He pointed out that evolutionary theory had no good, or even very plausible, way to explain how life could have arisen from non-living materials to begin with. There are some simple probability calculations one can perform to guess how long it would take randomly interacting molecules of a prebiotic sort, even under favorable conditions, to spontaneously form the very particular building blocks of today's organisms. The results aren't pretty for a non-miraculous account of life's origins—the biosphere looks like an extremely unlikely accident.

It is not only at the origins of life that mainstream biology invokes accident as a central explanatory principle. As Stuart Kauffman, fellow at the Santa Fe Institute and winner of a MacArthur "genius" grant, points out in *At Home in the Universe*, "Biologists see organisms as tinkered-together contraptions, and evolution as a tinkerer. Organisms are Rube Goldberg machines; the jawbone of an early fish became the inner ear of a mammal. Organisms really are full of the strangest solutions to design problems. Biologists delight in discovering these and noting to one another, and particularly to those of us inclined toward theory in biology, 'You'd never have predicted that!' Inevitably the assertion is correct." Kauffman cites a statement by Jacques Monod, a Nobel-winning biologist, that "Evolution is chance caught on the wing."

WE AND EVERYTHING LIVING, IN THIS view, are entirely historical accidents. Kauffman's research program—one might almost say his obsession—is to demonstrate the possibility of providing better explanations than "accidents happen" when confronted with the intricate structure and behavior of complex evolving systems.

At Home in the Universe is a popularization of his 1993 tome, *The Origins of Order*, where Kauffman first set out a comprehensive statement of his vision. That vision takes in not only biology but also economy, culture, and society. It seeks a new synthesis between reductionism and holism, as well as chance and necessity; it tries to lay a mathematical foundation for predicting the occurrence of spontaneous order while considering the role of evolution and selection; it bids fair to bring forth a new technology of univer-

sal biochemical synthesis. It is not modest.

Kauffman's basic tactic is to admit that the specific manifestations of complex evolving systems are accidental, but to provide grounds for believing that something like them—something orderly, self-regulating, and complex—is statistically likely, even inevitable, given the right initial conditions. A second thrust explores the limitations of natural selection as a mechanism for generating order and fitness, showing how evolving systems can get sidetracked by mutational drift, internal complexity, and myopic adherence to local rather than global optima.

A third theme is the role of coevolution—interactions between adapting populations that affect the fitness of one another—in creating order and stimulating a better fit with the environment. And running through it all is the conjecture that complex systems have a tendency to evolve "to the edge of chaos," where most of the component parts have stable relationships, but there are also areas of instability which allow the system to respond to contingencies in the environment.

THE ORIGIN-OF-LIFE ISSUE IS WHERE Kauffman argues, on statistical grounds, that life is not a cosmically improbable accident but rather the most likely consequence of random chemical processes—that "there are compelling reasons to believe that whenever a collection of chemicals contains enough different kinds of molecules, a metabolism will crystallize from the broth." This is a view of life as a process, a pattern found amid the electron dance of chemicals, much as sound is a pattern of motion imposed on the collisions of gas molecules.

Think of a living entity as a set of chemical reactions (powered by a flow of energy from outside sources) that is "orderly" in the sense that the same kinds of chemicals, in roughly the same proportions, are produced over time from an external supply of basic "food" molecules. Let us suppose further that all the chemical reactions in the set must be catalyzed (facilitated by another molecule, a catalyst) if they are to proceed rapidly enough to keep the network going. The problem is where the catalysts come from, and the only possible solution is for them to be the products of some of the reactions in the network. Thus, for a set of interacting chemicals to look like a living entity, each chemical's generating reaction must have a catalyst within the set. Kauffman calls this property "catalytic closure" and refers to sets that have it as "collectively autocatalytic systems."

When put this way, it sounds pretty implausible. What are the chances that you could find a set of chemicals and reactions that just happened to have catalytic closure? Kauffman's big idea is to show that this intuition is wrong, that a) if you have enough random catalyzed reactions in a set of chemicals, you get catalytic closure, b) the ratio of reactions to molecule types increases as the number of molecule types increases, and therefore c) if you gather up enough different chemicals, and each has a very small random chance of catalyzing any given reaction, then you are guaranteed to generate a collectively autocatalytic system.

Kauffman admits that the specific manifestations of complex evolving systems are accidental, but provides grounds for believing that something orderly, self-regulating, and complex is statistically likely, even inevitable.

"As the ratio of reactions to chemicals increases, the number of reactions that are catalyzed by the molecules in the system increases. When the number of catalyzed reactions is about equal to the number of chemical [types], a giant catalyzed reaction web forms, and a collectively autocatalytic system snaps into existence. A living metabolism crystallizes. Life emerges as a phase transition."

THIS IS A GREAT STORY. IS IT TRUE? THE mathematics are fine, but whether the model is a good representation of chemical reality is outside my competence. A couple of things trouble me. First, if random collections of diverse chemical species, suitably confined and energized, have a propensity for coming to life, how come we haven't seen any in nature? As far as I know, all known self-sustaining chemical reaction networks are conventional living cells, complete with RNA, biological amino acids, and so on. No radically different chemical forms of life seem to exist, although Kauffman's theory seems to say that they could be forming regularly in various cracks and clays and crannies. Perhaps they cannot survive competition with "standard" life and so are destroyed soon after snapping into existence; perhaps we simply haven't been looking for them and so have missed them.

Second, if collective autocatalytic systems are so prone to being born, then why haven't the other planets of the solar system become infested with various forms of life (whose chemistry would differ from ours)? Kauffman argues that life of some kind, not necessarily the particular chemical patterns we see in our biosphere, is sufficiently likely to form that we should consider ourselves not "We the accidental" but rather "We the expected."

Just how expected are we? Perhaps it is unfair to consider it hedging when he says, "I shall not be overly surprised if in the coming decades, some experimental group creates such life anew, snapping into existence in some real chemostat, creating protocells that coevolve with one another...I would not be overly surprised. But I would be thrilled." And the Sunday newspaper supplements would be full of chin-pulling pundits worrying over the "troubling implications" under illustrations with Frankenstein themes. But I'm afraid that until the attempt is made and either succeeds or fails conclusively, the catalytic closure theory will generate plenty of goose bumps, but few thrills.

Once we get past the question of how complex systems get started in the first

place, and ask how their future evolution occurs, we again face a tension between the historical and natural-law modes of explanation. Historical explanations understand the state of a system primarily by where it has been before, so that accidents of initial conditions or chance events largely determine how things turn out. Natural law explanations seek out underlying forces, present at all times, that shape outcomes. Both modes are usually essential for well-rounded understanding, but the balance between them changes from field to field and sometimes over time in the same field.

Kauffman, with a biology background, sees natural selection as a historical mode of explanation, with random mutations reproduced or not based on their possessors' relative ability to cope with a varying environment. This is not surprising; especially in its modern form, exemplified by Stephen Jay Gould's *Wonderful Life*, evolutionary theory is relentlessly agnostic about the specific outcomes that are to be expected from natural selection.

The idea of evolution as having tendencies toward "higher" or more complex organisms, for example, is considered, at best a dubious proposition, and at worst a piece of anthropomorphic conceit redolent of religious mysticism and apologetics for social inequality. Even the notion that organisms are "organized" by inherent rather than accidental forces is rejected. As Kauffman notes, "This image fully dominates our current view of life. Chief among the consequences is our conviction that selection is the sole source of order in biology. Without selection, we reason, there could be no order, only chaos."

With this backdrop, *At Home in the Universe* launches its challenge to the standard dogma, asserting that selection is only part of the story, that "Self-organization may be the *precondition* of evolvability itself. Only those systems that are able to organize themselves spontaneously may be able to evolve further. How far we have come from a simple picture of selection sifting for fitter variants. Evolution is more subtle and wonderful."

This claim is advanced by a kind of indirect proof: Selection can't possibly do all the marvelous things it would have to to generate the order we see in the world, so what's left must be the result of spontaneous order.

KAUFFMAN ARGUES PERSUASIVELY, based on probabilistic considerations, that as a system's performance depends more and more on the interconnections among its parts, any small change in one of the parts is likely to lead to a catastrophic loss of fitness (the "complexity catastrophe"). As a result, classic, incremental natural selection cannot possibly generate very fit, complex forms with a high number of interconnections compared to the number of parts. He also shows that if there aren't enough interconnections relative to the number of parts and to the rate of mutation, then even if a good solution is found, random mutations will tend to carry the system away from the optimum faster than selection can drag it back (the "error catastrophe").

From a theoretical point of view, then, natural selection can only generate high levels of fitness under a relatively narrow range of circumstances—not too much or too little mutation, too many or too few interconnections. Kauffman suggests that it is spontaneous order that forms the basic "just right" structures from which natural selection is launched; the initial conditions of evolution are not accidental but lawful.

Those ideas may be important in the study of human artifacts and institutions as well as in biology. Kauffman's models show, for example, that the rate of performance improvement for evolving systems slows down as higher performance is achieved. He relates this to the well-known "learning curve" in economics, where the unit cost of production in a plant, firm, or industry declines rapidly at first as production experience is accumulated, but gradually flattens out.

Learning curves and Kauffman's simulations of evolution both display a mathematical form called a power law, where every doubling of cumulative output reduces unit costs by the same percentage. He posits that the similarity in mathematical form is due to a similarity in underlying mechanisms—the gradual exhaustion of opportunities to improve as one reaches higher and higher peaks on a metaphorical "fitness landscape." Kauffman notes that his models of evolution and technological history both show initial progress coming as big changes are made in structure (gasoline versus steam engines in automobiles, for example) while later progress comes from small refinements (power versus manual steering).

Those analogies are suggestive and not implausible, but hardly conclusive; there are lots of processes that might lead to power-law curves, just as lots of different sets of data fit a normal bell curve. For example, the late Allan Newell's *Unified Theories of Cognition* describes how human skill at simple tasks, such as pushing buttons when certain lights go on (a psychologist's idea of a fun date), follows a power law; Newell then lays out a cognitive theory of learning (called "chunking," to describe the welding together of memories into single units) that generates it. Maybe factory performance follows a power law as practice is accumulated because of the buildup of useful chunks in organizational memory, and not because of diminishing returns to evolutionary search of the problem space. Nevertheless, Kauffman's approach is intriguing because it makes multiple predictions within and across problem domains while its assumptions are quite general.

FROM THE POINT OF VIEW OF TRADITIONAL social science, or indeed of anyone concerned about the role of spontaneous order, competition, and cooperation in regulating human life, *At Home in the Universe* is most interesting when it attacks the problem of coevolution. Here, Kauffman extends his probability models to multiple populations, each of which constitutes part of the environment of the others, mutating and searching for peaks of fitness. The interesting twist is that when one system mutates, it affects the fitness landscape of all the other systems.

Thus, if flies improve their vision and can spot threats at a greater distance, frogs with longer tongues might have an advantage over their less well-endowed cohorts. If one business develops a method of speeding up the delivery of orders to customers, another business may find that it should deliver more slowly (thereby cutting its costs), charge lower prices and attract less time-sensitive customers.

The actual models Kauffman uses are abstract and general, with not a frog tongue or delivery guarantee in sight. He focuses on the question of whether the coevolving populations (or firms, or technologies) will eventually settle down to some kind of steady state, where each population is at an optimum as long as the other ones stay put, or whether they will just keep bouncing around in an endless, chaotic display of one-upsmanship. The results: When the amount of interconnection between the evolving populations is "just right" relative to the internal interconnections among the parts of each system, average fitness for all the populations is highest. Furthermore, in this "just right" zone, the overall system is poised between order and chaos—most of its components most of the time are in a steady state, but every now and then some of them start to evolve in new directions.

Finally, if each population is allowed to evolve its own degree of internal interconnection, holding constant its interconnection to others in the coevolutionary system, each will, as if by an invisible hand, be moved by selection pressure toward the "just right" edge-of-chaos regime. Once again, while the specific details of evolution cannot be predicted, important general features appear to spring up in a lawful manner.

In this case, the models seem to be saying, at least metaphorically, that a freely evolving economy or ecology self-tunes so as to maximize the fitness and survivability of each of its members. I'm not sure just what it would mean in real-world terms for a firm to change the number of internal interconnections it possesses, because I'm not sure exactly what the "parts" of Kauffman's abstract entities should correspond to in an economic context. But if a reasonable interpretation is possible, then the result is of great importance.

KAUFFMAN GOES FURTHER, INVESTIGATING how varying degrees of decentralization in a system might affect that system's performance at accomplishing some overall goal. He became interested in this issue after being prodded by management-oriented people in the orbit of the Santa Fe Institute, who wanted theoretical principles to guide the delayering and flattening of organizational hierarchies and the outsourcing and reengineering of work processes.

His model looks at whether systems evolve better solutions when they are broken into interacting but independently searching "patches," or when they are combined into one big evolving organism. The latter configuration, which Kauffman charmingly refers to as "Stalinist," turns out to work well for problems of low complexity, with few conflicting constraints. When problems start to get complicated, where the solution to one aspect can easily foul up another, it turns out to be better to break the system into separate patches.

How many patches are best? Once again, the answer appears to be a "just right" number where the evolutionary process is orderly, but on the edge of chaos, so that the system can persist with good solutions but not get permanently stuck on them without looking for better ones. So neither Gosplan nor a population of yeoman farmers is likely to be a good model for a corporation tackling complex problems; the in-between compromises we see all around us probably make more sense than oft-peddled fantasies of giant cross-functional teams or purely "market-based" management, although we might have guessed that without Kauffman's models.

For anyone—including earnest 14-year-olds—interested in big questions about science, history, and our place in the cosmos, *At Home in the Universe* offers an unparalleled combination of graceful writing, clear exposition, respect for the reader's intelligence, and the thrill of seeing the world anew. I do not know which, if any, of its ideas will become the seeds of tomorrow's science, but I cannot escape the feeling that Stuart Kauffman has changed the terms in which thoughtful people will discuss the nature of evolution and natural law.

Steven Postrel (Spostrel@aol.com) teaches management strategy at the Kellogg Graduate School of Management at Northwestern University.

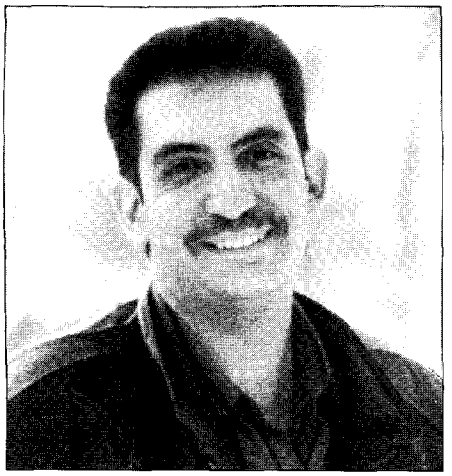
Reaching for Roots

By James G. Lennox

Ayn Rand: The Russian Radical, by Chris Matthew Sciabarra, University Park, PA: Penn State Press, 477 pages, $55.00/$18.95 (paper)

DURING THE 1930S, WITH THE United States deep in Depression, with its intellectuals overwhelmingly favoring various forms of statism and collectivism, a few valiant and lonely voices—Isabel Paterson, Albert Jay Nock, Ludwig von Mises, Ayn Rand—spoke out in the name of liberty and individualism. Among them, Rand pushed the defense of individual liberty beyond political philosophy to ethics, and finally beyond ethics to epistemology and metaphysics. To what extent were her philosophical explorations shaped by the fact that her first 20 years were lived in Russia, during the tumultuous upheavals that eventually produced the Revolution of 1917 and the Soviet Union? That is the question Chris Sciabarra sets out to answer in *Ayn Rand: The Russian Radical.*

The question is timely. Since the 1994 elections, the name of Ayn Rand has ap-



Chris Matthew Sciabarra: He makes a bold attempt to trace key elements of Ayn Rand's philosophy, and especially her philosophical method, to her Russian roots.

peared repeatedly in discussions of philosophical influences on the free market agenda of the young "radicals" elected to office, and on the think tanks to which they turn. And the quantity of material available to help us answer this question has also been growing in recent years. Some of it—*Objectivism: The Philosophy of Ayn Rand* by Leonard Peikoff, *Letters of Ayn Rand,* recently edited by Michael Berliner, the volumes of *The Ayn Rand Library*—is readily available. Other material—preserved taped speeches, radio and TV interviews, and Q & A sessions in lectures—is familiar only to the most avid devotees. Finally, if one focuses on Objectivism as a philosophical system and a cultural movement there is a growing collection of books, essays, and lectures by those who, to greater or lesser degrees, have either been inspired or horrified by the ideas of Ayn Rand.

Ayn Rand: The Russian Radical makes a bold attempt to trace key elements of Ayn Rand's philosophy, and especially her philosophical method, to her Russian roots, and in particular to her years at Petrograd University. Sciabarra displays an encyclopedic familiarity with virtually all of the relevant material, and shows great skill in synthesizing Rand's views on specific topics from passages scattered throughout her novels, essays, notebooks, lectures, and interviews. This is, furthermore, the first study to explore the intellectual milieu of Rand's early, formative years. And, despite its title, it goes well beyond an exploration of Ayn Rand. Commentators of all kinds—advocates, detractors, sympathetic interpreters—are discussed and exhaustively referenced in a comprehensive analysis of Objectivism as a philosophical and cultural movement. Nevertheless, despite these virtues, the book fails to achieve its principal historical and interpretive goals.

A central task for the historian of ideas is to provide a narrative which explains an intellectual innovation, supported by evidence in favor of that explanation. Part of the narrative aims to reconstruct the salient influences on the innovator in question. The historical and cultural milieu provide possible influences and experiences—the problem for the historian is to find evidence of the actual influences on the innovator's purposeful inquiries.

That evidence may be direct or indirect. For example, when, in *On the Origin of Species*, Darwin first introduces the idea of "the struggle for existence," he explains that it can be derived from "the principle of geometric increase." The similarity of his wording to passages in Thomas Malthus's *Essay on the Principle of Population* might lead a historian to speculate Malthusian influence. But "geometric increase," after all, was standard mathematical language for exponential growth. A few lines later, however, Darwin refers to his principle as "the doctrine of Malthus applied with manifold force."

Still, did Darwin read Malthus after seeing the implications of population growth, or did Malthus's writing help him see them? Darwin's *Autobiography* seems to provide the answer, recalling that it was while reading Malthus in October 1838 that this key idea occurred to him. Still, historians are rightly skeptical of personal recollections of events in the distant past. Fortunately, Darwin's research notebooks from 1837–8 survive, and there, in entries from late September of 1838, his notes on Malthus bear theoretical fruit before our eyes.

An initial speculation of Malthus's influence, based on thin, indirect evidence, has been transformed into a confirmed influence. The next, more difficult, task is to determine the precise nature of that influence. That Darwin's words needed no "reconstruction" to make them sound Malthusian made the initial speculation of influence plausible. As we will see, it is quite otherwise in the case of Sciabarra's speculations about the influence of her Russian roots on Ayn Rand.

THE FIRST CHAPTER INTRODUCES US TO the Russia of Ayn Rand's (then Alissa Zinovievna Rosenbaum) youth. One influential philosopher after another is described as "profoundly Hegelian." Other Germanic influences on Russian philosophy include Fichte, Kant, Schelling, and Schopenhauer—there are even bizarre fusions of Nietzsche with Christian mysticism and Marxism. Behind pre-Soviet Russian culture, then, are the same philosophers who influenced Weimar Germany. Sciabarra notes that Ayn Rand despised every fundamental characteristic of this culture.

Indeed, this list of German influences reads like Ayn Rand's "most wanted" list. In the title essay of her 1961 book *For the New Intellectual*, for example, Rand refers to "the Witch-doctory of Kant and Hegel" and "the pure Atilla-ism of Marx." In the essay "What is Romanticism?," reprinted in *The Romantic Manifesto* (1970), Rand refers to Schelling and Schopenhauer as "avowed mystics advocating the supremacy of emotions, instincts or will over reason." And in the introduction to the 25th anniversary edition of *The Fountainhead* (1968), she describes Nietzsche as "a mystic and an irrationalist." Sciabarra concludes, reasonably, that, Ayn Rand's first published fiction—*We the Living* and *Anthem*—is a "passionate reaction" to this culture.

Yet these ideas are supposed to have also made a positive impression on Ayn Rand's formidable mind, through the influence of the one philosophy teacher she ever mentioned, N.O. Lossky. Lossky was, in fact, one of those who transmitted post-Kantian German philosophy to Mother Russia—early in his career Loss-

ky translated works by Kant and Fichte into Russian. He left Russia three years before Rand did and, unbeknown to both, in the 1950s they lived in New York City, he a professor of philosophy at St. Vladimir's Orthodox Theological Seminary and Academy, she at work on *Atlas Shrugged.*

Though the evidence is all indirect, Sciabarra (following up Rand's recollection that a sister of Vladimir Nabokov's was a classmate) convincingly places Alissa in a girl's prep school operated by Lossky's parents-in-law, in which he occasionally taught. Sciabarra is rightly cautious: "It is not impossible that she could have enrolled in one of his college preparatory courses."

The various philosophical currents flowing through post-Revolutionary Petrograd University are briefly summarized before a discussion of the "links between Lossky and Rand" ensues. It opens with a frank admission that "it is almost impossible to establish the exact circumstances of their relationship." The evidence for this connection consists of taped interviews with Rand reported in Barbara Branden's *The Passion of Ayn Rand* and the earlier essay "Who is Ayn Rand?"; conflicting recollections of Lossky's sons, grandson, and a student; Lossky's memoirs; and archival records regarding events at Petrograd during the period from 1917 to 1923.

Though Rand recalls a class in ancient philosophy taught by Lossky, there are no records of him teaching such a course. Furthermore, Lossky was removed by the Soviets from the faculty in 1921, before Rand entered. Sciabarra speculates that he may have given lectures at the university's Institute for Scientific Research which Rand may have attended. While admitting there is no other evidence supporting Rand's recollection, he later concludes: "By another 'accident' of historical circumstance, young Alissa Rosenbaum had been among the very last students taught by Lossky in his native homeland." Similarly, the earlier speculation that Alissa could have learned of Lossky while in prep school later becomes a certainty. Such upgrading of possibilities into established facts without additional evidence is a persistent feature of *The Russian Radical.*

Part One ends with a brief but thoughtful discussion of Rand's novels, with considerable time spent exploring Rand's attitude toward the thought of Friedrich Nietzsche. Sciabarra adds to this topic evidence of a peculiarly Russian understanding of Nietzsche which fits well with Rand's, stressing its Dionysian features while downplaying its critique of Christian morality. In this case Rand herself reports youthful familiarity with Nietzsche's writing. But the direct evidence that the youthful Ayn Rand was positively influenced, through Lossky, by the "dialectical antidualism" of early 20th century Russian philosophy is thin.

In Part Two, however, such influences are taken for granted: "Though Rand rejected much of the content of Lossky's philosophy, her own system retained an exhaustive and dialectical form that reflected her roots," writes Sciabarra. And, later, "[A]s I have demonstrated, Rand's philosophy...was a historical product of her revolt against formal dualism."

Demonstrated is a strong word—and entirely inappropriate here. No evidence that Rand was familiar with Lossky's philosophy has been provided, and only weak, conflicting evidence that she studied ancient philosophy with him. Sciabarra thoroughly discusses the philosophy of Russia's "Silver Age," but provides no direct evidence that it influenced Ayn Rand.

ONE FORM OF INDIRECT EVIDENCE FOR such an influence would be a close similarity between Rand's philosophical method and that of the intellectuals who could have been her teachers. Though indirect, such evidence can be convincing, provided there is systematic, unadorned, and detailed similarity. A central task of Parts Two and Three of *Ayn Rand: The Russian Radical* is to establish that on topics ranging from the theory of concepts to ethics and aesthetics, just such a close similarity exists.

Ayn Rand's philosophical method is among the most innovative aspects of her thought. Sciabarra characterizes her method as "dialectical," and explains early on what he means. On his understanding, a dialectical method "focuses on relational 'contradictions' or paradoxes revealed in the dynamism of history," yet "refuses to recognize them as mutually exclusive or exhaustive."

The dialectician's aim is to "transcend" such oppositions through "synthesis"—to see those apparent opposites as parts or aspects of a wider whole. Where does one find such a philosophical method in Ayn Rand? "[I]n her rejection of such 'false alternatives' as materialism and idealism, intrincisism and subjectivism, rationalism and empiricism."

It is true, and an important insight, that Ayn Rand had a keen eye for the shared premise underlying "false alternatives." Behind modern philosophy's alternatives of rationalism and empiricism, for example, she recognized a shared assumption: Abstract knowledge is neither based on, nor applicable to, the perceptible world we live in. Thus, for Objectivism, the fundamental philosophical issue is determining how abstract knowledge is validly derived from perception.

But this is precisely not asserting "that each of the opposing schools of philosophy is half right and half wrong." Rather, this method concludes that both alternatives are fundamentally wrong, because they rest on the same fundamental error. Nor is Ayn Rand's method systematically aimed at "overcoming dualisms." Indeed, Objectivism rests on a number of them: consciousness and existence; reason and force; individualism and collectivism.

Yet the language of Kantian/Hegelian "dialectic," a language Ayn Rand explicitly attacked, is repeatedly used by Sciabarra to characterize her method. In this presentation of her thought, she "transcends opposites," "developing antinomies," "recognizes interpenetration of opposites," "works toward a new synthesis," "traces internal relations." All of this is used as evidence that she is "true to her dialectical roots." Such characterizations

are reinforced by constant claims of alleged similarities to Hegel, Marx, Marxist historians, Weber, even Trotsky.

THE EFFECT OF THOSE COMPARISONS IS clear. Absent the requisite direct evidence for a philosophical connection to "her Russian roots," Sciabarra intertwines such claims of kinship with dialectical redescriptions of Rand's ideas, thus giving the appearance of indirect evidence for such a connection. In dealing with the obvious objection that she explicitly rejected this philosophical approach, Sciabarra claims that she simply misunderstood it. But this undercuts his central historical thesis. Had she have so thoroughly absorbed a "dialectical sensibility" from her teachers, how could she so completely misunderstand it? When *Ayn Rand: The Russian Radical* is insightful and illuminating about Objectivism, as it sometimes is, it is in spite of this misguided historiography, rather than because of it.

Chapter 10, the concluding chapter of Part Two, explores Ayn Rand's social philosophy, including her attitude toward libertarianism. This chapter is a thicket of inappropriate comparisons to Hegel and Marx, comparisons that depend on misdescribing her views and ignoring the meaning of theirs. Comparisons to those who are closer to home, such as Hayek, are no less misleading. Sciabarra insists, despite her well-known antipathy to the label, that Rand is a libertarian who "incorporates significant anarchistic elements that cannot be ignored." In trying to figure out what Sciabarra took to be those "significant anarchistic elements," all I came up with were Rand's views that compulsory taxation and the draft are immoral violations of individual rights. But there is nothing "anarchistic" in those ideas; they follow directly from a conception of the state as the defender of objectively defined individual rights.

Part Three carries the same themes into an exploration of Ayn Rand's philosophical activism. "Just as Marx's dialectical method was 'in its essence critical and revolutionary,' Rand's dialectical sensibility led her toward a comparable, radical resolution." Once again, next to a candid admission that there is "no available evidence" of any such influence, there is insistence that her "assessment of the nature of power" would be akin to that of Hegel and Marx because of "her dialectical approach."

A thoughtful discussion of Rand's views on the preconditions of a benevolent culture is marred by unconvincing attempts to reveal her "dialectical sensibility" that obscure her thought rather than illuminate it: "Even as she revolted against the Russian *sobornost* in its mystical and Marxist incarnations, she sustained a belief in a conflict-free society of individuals united by their common love for the same values. Rand achieved a dialectical *Aufhebung*—a sublation of dualities that simultaneously abolished and absorbed, transcended and preserved elements of the Russian communitarian vision."

The recently published *Letters of Ayn Rand* contains a number of letters, especially those to Isabel Paterson and John Hospers, in which Rand discusses philosophical method and the history of modern philosophy. The picture that emerges from them is of a young novelist caught up in the battle for liberty and individualism in an America quickly succumbing to the collectivism from which she had fled, beginning to explore the philosophical foundations of this battleground. (Sciabarra reviewed *Letters* in the November 1995 issue of REASON.) They show no hint of the sorts of influences that Sciabarra conjectures were crucial to her philosophical development.

Ayn Rand: The Russian Radical asks an important question. But until better historical evidence is provided, the claim that Russian dialectics is the key to Rand's philosophical odyssey remains an unpromising conjecture. ®

James G. Lennox (jglennox@ums.cis.pitt.edu) is professor of history and philosophy of science at the University of Pittsburgh. A version of this review also appeared in the Institute for Objectivist Studies newsletter.

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Corporate Rakeovers

By Thomas W. Hazlett

Socking it to the soulless corporation

ITEM 1. THERE IS A TERRIBLE COMPANY spreading filthy messages to our youth, undermining "family values" and the American way of life. The Florida Baptists are on to them. They have proposed to boycott Walt Disney Co., a corporation that produces titillating movies and extends insurance benefits to domestic partners of Disney World employees. The Florida Baptists are presenting their resolution to the annual nationwide meeting of the Baptist flock—convening in New Orleans.

While my family might prefer Bourbon Street to Main Street, U.S.A., I was unaware that this was in line with orthodox Baptist theology. And, I admit, it came as a bit of a surprise that the corporation that created Mickey Mouse and the Happiest Place on Earth was dangerously close to betraying family values. But I am absolutely certain that the single best place in America to sort this all out is the French Quarter, particularly since the advent of riverboat gambling in Louisiana.

Item 2. The federal government, under the auspices of the Equal Employment Opportunity Commission, is pursuing the legal theory that the reason people patronize the Hooters restaurant chain is *for the food.* Hence, food servers should be judged only on their ability to take orders and distribute prepared dishes. Because those employees now hired for this task have not been known to be outstanding in this dimension—indeed, it is unclear if anyone can recall what, if anything, they ate at a Hooters—the fact that males compose 0.00 percent of the waitstaff is prima facie evidence of discrimination.

Item 3. In the recent movie *Casino*, the viewer receives a basic tutorial on the gaming industry. The timeline is crucial: The 1970s and early '80s were the good ol' days in Vegas, when mobsters skimmed the take and hotel personnel dutifully crushed the hands of card counters. But, alas, times change: The picture ends with shots of spectacular, gleaming new mega-structures built in the late '80s: Giant corporations funding vast amusements for families. The voice-over laments this tearful farewell to tradition. Gone are the dames, the wiseguys, the scams, the hustles. Those corporate suits came in, and they just ruined the town!

CORPORATION BASHERS COME IN ALL FLAvors, from the pious to the punks. And each and every one of them appears shocked—*shocked*—to observe that the corporation is soulless. But the entity that so disappoints them, the one that is immoral, or cold-hearted, or mean-spirited—is a *fictitious* person. The corporation can only reliably be accused of one of the Seven Deadly Sins—shameless pandering. It is a slave to consumer demand, and it will ruthlessly exploit whatever the market will bear.

It is not a departure from this view to see that firms often go to great lengths to create images which consumers will note and respect: I have a very good idea of what awaits me should I pop into Disneyland, Hooters, or The Mirage. Nor should consumers be shy about personalizing their corporate grievances when they feel abused.

So please e-mail me if you're considering the purchase of a new boat—I'll delight in telling you which brand not to buy. I don't ascribe any extra ill-will or extraordinary greed to a company's failure to perform. Mere incompetence explains it quite nicely.

After the Hooters' case was filed, an attorney materialized (as if pushed by an invisible hand) to represent a group of male supplicants seeking restitution. When asked if the restaurant chain had the right to select staff according to the preferences of their customers, he trumped consumer sovereignty with the race card: If a restaurateur decided to pursue a "plantation" theme, the attorney argued, it would be immoral and illegal to hire black men dressed like slaves as waitstaff.

This response recalls Dave Barry's "people will screw dogs" paradigm: The notion, clung to by so many, that pet sexual abuse would run rampant if there were no laws preventing it. But, leaving aside the silly detail that "plantation" theme restaurants are only likely to get funded via a generous grant from the Department of Agriculture or the Small Business Administration, the fact is that "plantation" themes are produced, in highly discriminatory fashion, quite regularly—in Hollywood. Is the counselor-at-law suggesting that whites be hired for slave roles, and sent to make-up for blackface? Or is editorial control over skin color to be asserted by the EEOC, as well? Stop those racist audiences! Out, out, damn history!

To bemoan Disney or Hooters or the new Vegas is to condemn consumer demand itself. The puzzle: Why are folks so obsessed with the idea that someone else may be having a better time? And why do great organizations—the Baptists, the federal government, the Cosa Nostra—get swept up in it?

Then again, why not ride the wave? I've never been, but tonight I'm going to Hooters—for the food. And I shall heed the Baptists' advice—I'll go to the Hooters in New Orleans. After which the whole family can hit the craps table! ®

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu), an economist at the University of California at Davis, is a visiting scholar at the American Enterprise Institute.

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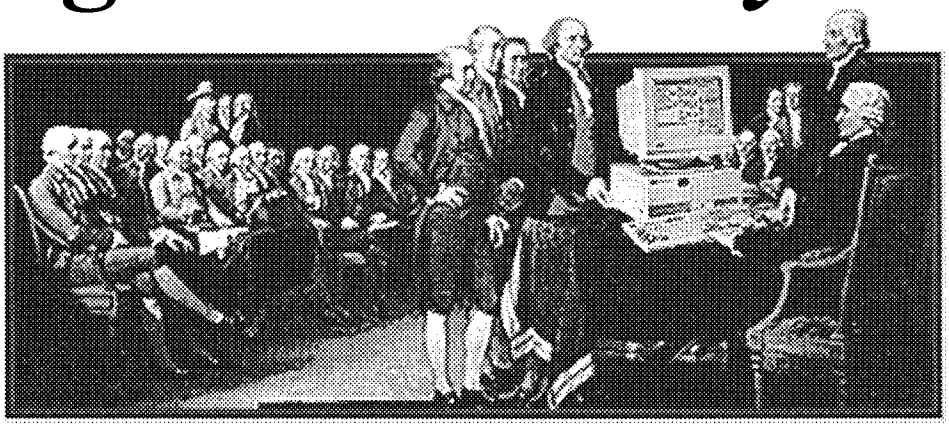

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